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Government of el 'Iraq

060

An Inquiry

INTO

LAND TENURE AND RELATED QUESTIONS.

Proposals for the Initiation of Reform.

BY

SIR ERNEST DOWSON, K.B.E.

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Bowyers Field,
Wrotham,
Kent.
December, 1931.

His Excellency
The President of the Council of Ministers,
Baghdad.

Excellency,

121 I have the honour to submit herewith my definite report on land tenure and related questions in el 'Iraq, in accordance with the invitation extended to me by Government and embodied in resolutions of the Council of Ministers, dated July 4th and December 22nd, 1929, and previous correspondence.

This report should entirely replace the series of provisional reports containing recommendations for the commencement of settlement of rights to land, which were forwarded at the special request of Government at the beginning of this year. Unfortunately the early action then hoped for, was not realised. But since the recommendations in the present report on the subject follow the same lines, this advance series may have served a useful purpose if they facilitate fuller consideration of these measures now.

The preparation of these provisional reports and a certain number of other current demands have helped to delay the presentation of this report: but the decisive reasons why it has taken much longer than I originally anticipated have been the time needed to study adequately the great mass of material ultimately collected and to formulate measures that would both achieve their object and be within the country's resources.

The necessity to put land tenure and land revenue on to a more stable basis has long been recognised. The ways and means of doing so have been continuously discussed throughout the last decade; but without any effective or sustained action having so far resulted. As mentioned in due course, el 'Iraq is not unusual in this respect; but, none the less, until effective measures are taken to remedy these long-standing evils, they must continue to impede the development of the country and the well-being of the people.

It appears from past discussions that the hesitation of successive governments to attack these evils resolutely is largely to be ascribed to lack of conviction both as to the real character of the problems and as to the practical remedies to be applied. It has therefore appeared to me essential to fulfil two governing requirements if I was to provide Government with assistance of a useful nature and in a useful form. I must probe the problem thoroughly and present it comprehensively, whatever time and effort was involved. And in formulating my recommendations, I must pay the closest attention to the practicability of the measures proposed, having regard to the country's capacity and resources. While it would be too much to hope that I have satisfied these conditions

fully, I believe that I have been able to furnish Government with a fundamentally reliable foundation for attainable measures of reform.

If I have been able to do so it is due in the first place to the unstinted co-operation that I received from everyone to whom I applied for information or help during my stay in the country, and in the second to having been able to treat the question as a continuous comprehensive study throughout.

In conclusion I wish to express my gratitude to Your Excellency and to all those to whom I am indebted for the unfailing courtesy and generous assistance that I everywhere received.

I have the honour to be,

Excellency,

Your obedient servant,

(Signed) ERNEST M. DOWSON.

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An Inquiry

INTO

LAND TENURE AND RELATED QUESTIONS

PART I.—SCOPE AND PROCEDURE OF INQUIRY

185 1. The considerations which led Government to ask me to visit el 'Iraq in the winter-spring season 1929-30 were briefly summarised at the time. The necessity of setting up a sound system of settlement and registration of rights to land as an essential preliminary to agricultural development was urged. It was represented that until effective measures to achieve these ends had been devised and put into operation, agricultural development must either be delayed or based on unstable foundations. It was emphasised that while the country was full of agricultural possibilities and only required development on sound lines, it lacked the necessary basis of a sound system of land registration. And it was explained that the Departments of Revenue, of Land Registration and of State Domains were pursuing reform without proper co-ordination and on no connected plan.

The main objective was the promotion of agricultural development. The particular needs were adjudged to be (i) the execution of a settlement of rights to land throughout the country, (ii) the establishment of an efficient system of book-keeping of those rights, and (iii) the unification of divergent and disconnected Departmental efforts. I was asked to study the problem as a whole and to advise how it should be attacked. As outlined that problem appeared to be essentially one of organisation and procedure for attaining two accepted objectives: a just settlement, and an efficient register, of rights to land. I anticipated that the requisite information regarding existing conditions would be readily available: and I expected that the discussions of previous years would have produced clearly defined issues. But I had not allowed for the peculiar fluidity and diversity of methods of land tenure practised.

423 427 It proved to be common knowledge that the tenure of some four-fifths of the cultivated land in the country was not governed by law, was not amenable to the jurisdiction of the Courts, and was not regulated in any methodical way at all. It was also common knowledge that the land law was defective and uncertain in its application to the other fifth. And it soon appeared that there was an almost complete lack of precise, authoritative and systematic information in the Headquarter Offices of Government in regard to land conditions generally and to the methods of holding, transferring and transmitting land actually practised from day to day by the great mass of landholders and agricultural peasantry throughout all parts of the country.

121 It therefore became necessary to extend the scope of my inquiry to include an investigation of the conditions of land tenure actually operating throughout the country, as distinct (for the most part) from those

121 enshrined in the Statute Books of Government. And since the taxation imposed on agricultural production is one of the most important practical conditions attaching to the utilisation of land, a study of such taxation had to enter into the inquiry. Nor could any investigation of conditions of landholding in el 'Iraq be intelligible or real which did not pay careful regard to the methods of irrigation, public and private, the prevalent forms and standards of cultivation, the distribution and remuneration of agricultural labour. It was not of course possible within the period of a few months to cover this vast field of investigation as thoroughly and completely as the occasion demanded: but owing to the widespread and generous collaboration aroused, the results provide an adequate basis for immediately useful measures.

121 185 This general study of existing conditions had to precede consideration of the three objectives originally indicated, if Government was to be sure of its ground and to be provided with a trustworthy foundation for progressively constructive reform. For settlement of rights to land pre-supposes and requires some stable bases of land law, or at least of legalised custom, on which such rights can be founded. And so far, by common admission, such bases rarely exist, nor do the discussions of previous years appear to have advanced agreement as to the remedy. Again although an efficient Land Register is indispensable in due course, both for the operation of the statutorily registered tenures, and for any orderly regulation of the enormous residue of (so-called) State Domain, yet the execution of a settlement of rights to land must precede the establishment of such a Register. For an effective Land Register is nothing but an intelligible and dependable record. Its function is simply to mirror clearly and faithfully rights to land existing at any and every moment. It is useless to devote money and effort to rectifying and burnishing the mirror, so long as it will only have an unintelligible tangle to reflect. Attention must first be directed to unravelling the tangle.

185 Further, while it is certainly true that no united effort had been made, and no connected plan pursued, by the three public services mentioned, yet it will be recognised that, as subordinate Departments of three separate Ministries, they were not in a position themselves to adopt any general scheme of reform. This is clearly the responsibility of Government as a whole. And, as will appear later, if any well-concerted and effective measures are to be undertaken, the better co-operation and co-ordination of the efforts of these services will not be enough.

423 2. The lack of a well-documented collection of information about existing conditions of land tenure throughout the country was not on consideration surprising, having regard to the vicissitudes of modern el 'Iraq's short history. There must have been an enormous amount of spade work to be done in establishing orderly government throughout the country during the last ten years: and the current needs of administration no doubt completely absorbed the time and energies of those who might otherwise have undertaken a systematic collection of trustworthy information. The collection of such information, particularly in statistical form, is apt to be a slow development in any country. It requires time, a scientific appreciation of the value of exact data, and the resources of a well-established and experienced public service. And in connection with land it requires a more comprehensive and far-sighted outlook than a number of disunited Departments can reasonably be expected to produce.

423 184 The collection of a representative volume of trustworthy information was also attended by peculiar difficulty, owing to the extreme diversity of conditions prevailing throughout the country. This diversity

is partly the outcome of historic causes and has partly been generated by differing local conditions and ethnic origins. Under Ottoman administration present-day el 'Iraq comprised the three vilayets of Mosul, Baghdad and Basra, each somewhat jealously watching, and watched from, the capital. This separatism was accentuated by divergent economic orientations. Mosul looked primarily northwards; Baghdad to Persia and the bordering desert; Basra to the sea. And superimposed on the traditional differences between the ancient vilayets were the more varied and more stubborn ones arising from differing natural conditions. Local social influences combined with these varying conditions to produce different practices, as well as to promote different policies, in different districts.

The general absence of reliable information was nevertheless baffling. For although principles are useful guides, and illuminating discussions can be based on generalities, which may or may not be true, a more dependable foundation is needed before measures of constructive reform can be confidently embarked upon.

3. My first care was to seek copies of all important previous papers dealing with the land problems of the country. Naturally many were unobtainable, while others were rare or fragmentary; but a number of those that remained call for gratitude and acknowledgment from a later worker in the same field. Several papers, written in the days of the early administration by experienced officers of the Indian Government, outlined measures for settlement which, if steadily applied and developed, should by now have gone far to mitigate, if not remove, the worst existing disabilities. Unfortunately, the promise of this preliminary work was interrupted and never took shape.

A fresh impetus seems to have been given to the consideration of reform by an extremely able "Note on Land and Revenue Policy" written by Mr. S. H. Longrigg, late Inspector General of Revenue, in May 1926. A series of most interesting and instructive discussions followed. But the writers commonly recognise the unavoidably academic nature of many of these discussions and the need to subject proposals to experimental trial, owing to the absence of adequate information of existing conditions. It is greatly to be regretted that such trials were not made. Measures of reform consequently continued to be confined to paper debates. This sterile result was ascribed to the lack of a formal acceptance and pronouncement by Government of its intended policy. Actually the fewer pronouncements of abstract policy that are made the better for the prospects of useful reform. The failure to do anything appears in fact to have been primarily due to the lack of a competent executive service charged with the study and conduct of such reform.

4. Even if there had been full and exact information available at the Headquarter Offices of Government, it would have been desirable that I should visit each province (Liwa) and get in touch with its conditions on the spot. The general lack of such information made it imperative to secure some expression of the great volume of local knowledge and experience of the actual operation of land tenure and its incidentals from day to day, that was dispersed throughout the country.

The procedure adopted for my inquiry while in el 'Iraq may be summarised under five heads. Firstly, I endeavoured to secure copies of all important correspondence and papers dealing with the land problems of the country as already mentioned.

Secondly, I drew up a questionnaire which was issued by the Ministry of the Interior to all provincial (liwa) authorities. This asked (i) for the

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124 compilation of a map indicating the existing distribution of various categories of land in the liwa, (ii) for the preparation of numerical returns relating to population, to the various categories of land, etc., and (iii) a hundred important questions covering the main field of the investigation.

114 Thirdly, I studied at Headquarters the working of the Central Government services primarily concerned, as thoroughly as my immediate purpose required and the time at my disposal permitted.

124 Fourthly, I visited each of the fourteen liwas in turn and (i) dis-
114 cussed the main problems thoroughly with the Governor (Mutasarrif), (ii) was taken to typical or specially instructive places, and (iii) met and questioned a number of other provincial officers, local notables, land holders and peasants. Owing to the previous circulation of the questionnaire, all provincial officers were well prepared for these discussions, while I also received very full written replies in all but every case.

124 Fifthly, I had the honour to be accorded several audiences by H.M. King Feisal as well as numerous interviews with Ministers, Deputies and others. And I also interviewed in Baghdad a number of experienced persons both European and 'Iraqi, with special knowledge and experience of land questions. Unfortunately owing to prolonged bad weather, which interfered with my touring programme and severely curtailed the time available for supplementing my information after its initial collection, it was not found possible to arrange meetings with some of those whom I was particularly anxious to see. I regret this very much, but greatly as they would have assisted me, I venture to believe that nothing they might have said would have seriously modified the main conclusions drawn from the mass of evidence collected.

000 5. Owing to the wideness of the field to be covered the five months that I spent in el 'Iraq were entirely occupied in collecting material which could not be digested until I got back to England. The records of the investigations fill more than forty dossiers. Naturally many gaps and uncertainties were discovered during the examination of this large body of material. This necessitated correspondence with Baghdad extending almost continuously over another six months. The attempt to obtain intelligible and consistent statistics was particularly troublesome.

It must not be thought that even this considerable volume of data covers the field wholly or unimpeachably, or that I can have escaped misinterpretations and errors. No such improvised body of information can be a satisfactory substitute for systematic public records and the accumulated experience of a competent and well organised public service able to concentrate on land problems. But the information and opinions collected, read in the light of experience elsewhere, do none the less enable the main evils to be diagnosed with confidence and the essential elements of constructive reform to be trustworthily indicated.

121 I have thought it advisable to explain the widening of the scope of my investigation and to outline the procedure adopted, so that the character and origin of my information is on record. But I have not attempted to reproduce the mass of conclusions which the material collected has yielded. This would fill volumes. And I have expressly excluded from consideration in this report many questions of the highest importance, which I have had to inquire about owing to their reaction on land tenure (e.g. methods of cultivation, of remuneration of labour, etc.), but which did not themselves directly constitute the subject of the inquiry. Again although it was necessary to study the special problems of each province (liwa) as far as time permitted, so as to get a

proper picture of the whole, I have confined myself in these pages t 121
what may be described as the general aspects of the question as distinc
from those of particular localities. Nor has anything like the attention [233]
the subject deserves been given to pastoral rights. For while settlement
of rights to grazing and pasture is also required, they do not call for such
rigid definition, nor is settlement of such rights so urgently needed as
of rights to cultivable land, unless the two conflict. Consideration of the
Land Revenue system in force when I visited the country has also been
omitted, as this system has since been superseded (see ii, 4).

In pursuance of the attempt to restrict attention at this stage to 121
those phases of the problem which call for action first, I have also avoided 423
consideration here of many features or incidentals of existing land tenure,
which may be intrinsically of as great importance as others that are
examined. Among matters which are not examined in this report for
this reason may be mentioned: the various forms of dedication in *waqf*,
the conditions of *mulk* tenure, the escheat of tapu tenure for failure to
cultivate or failure of heirs, known as *mahlul*, the charge known as *ujr*,
the position of newly formed land in a river termed *shati*, the old and
new forms of hypothec or mortgage. These almost exclusively affect
the registered tenures, and are best considered in the general study and
amendment of the land law which is advocated (see vii, 1). Similarly
the much-debated question of the conditions under which acquisitive
prescription of tapu tenure should come into effect, can have little
practical value, until the Government is in a position to implement its
statutory tenures. Important established customs affecting State
Domain, which are not entered into for the same reason are the *mugharisa*
and *ta'aba* systems of planting and tending gardens and groves.

Finally, I have thought it best, on these grounds also, to restrict
detailed discussion of proposed measures to those required for the initial
execution of reform. While the character of measures that would be
required subsequently to conserve the benefits attained by reform have
had to be indicated, no attempt is made to formulate them in detail.

Even generalised and truncated in these ways the main problem 000
remains a difficult one either to present or to master; but it has not
appeared to me possible to simplify it further without distortion. The
study of the land tenure of any country, with a view to practical and
realisable reform, is no light undertaking; and that undertaking is
attended with peculiar difficulties in el 'Iraq for reasons which are
explained.

To facilitate reading and reference I have divided this report into
nine parts, which I have endeavoured to make as self-contained as
possible. This necessitates some repetition and discontinuity on con-
secutive reading; but it is impossible to present this intricate question
in any readily digestible form. The subject matter of each of these parts
is given on the contents page and need not be repeated. The last alone
calls for explanation. It has been written in response to numerous
inquiries, official and otherwise, when I was in el 'Iraq, regarding the
wider setting of the problems of land tenure in relation to the general
development of the country as a whole and to the other great ameliora-
tive movements needed. It concludes with a summary of the main
recommendations made. It is hoped that this part of the report may be
of assistance to those who, while impressed with the critical importance
of a constructive reform of land tenure, may be unable to study the
whole of this report textually.

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PART II.—EXISTING CONDITIONS. THE LAND AND THE LAND SURVEY

123 1. The conditions of land tenure throughout el 'Iraq may be described generally as in various stages of divorce from innumerable primitive practices, but still rarely wedded to law. These conditions vary so much not only from province to province, but from locality to locality and from community to community, that no picture of them can be presented which combines fidelity of detail with a comprehensive view. Those who are familiar with the variations, even within one province, will appreciate the extreme difficulty of focussing the whole kaleidoscopic panorama into one generally intelligible picture. And yet it is impossible to plan or proceed with any sober and reasoned national attack on the unhealthy situation prevailing, without some dependable general diagnosis of that situation.

Neither effort nor time has been spared to secure this indispensable foundation for land reform and it is believed that the general analysis of existing conditions is fundamentally reliable; but it must always be remembered that no generalised statement can faithfully reflect the multitudinous local variations which exist everywhere. This does not matter provided the broad outlines of the analysis are sound, its limitations are understood and the need for some latitude in the application of reform later is recognised.

2. Area and Distribution of Cultivated Land

128 2. The data needed to compile a general map of the country showing the distribution of the land by its physical situation and agricultural potentialities not being available in the Headquarter Offices of Government, an attempt was made to remedy this deficiency. In response to a request already mentioned the Provincial authorities compiled a diagrammatic map on a scale of 1:250,000 showing the distribution of the land in each Province (Liwa) in certain broad classes. The Irrigation Department gave invaluable assistance in collecting the information on which the classification was based in the southern liwas, and the Survey Department in the preparation of the maps and the extraction of areas. The Land Registry (*Dairet el Tapu*) spared no effort to contribute, so far as their records allowed, the location of registered holdings. The original map sheets were left for consultation in Baghdad. The broad results are illustrated in Plates I and II, so far as the smaller scale used therein permits. The areas of the different varieties of land shown are given in Table I.

The compilation was a much more difficult and laborious task than the final simplified results suggest. The greatest trouble was taken by all those who collaborated to ensure that the maps represented the facts as faithfully as the conditions permitted. But it will be appreciated that the details given must not be regarded as reliable. This is due to the impossibility of analysing and classifying the land surface of the whole country with any approach to accuracy either in the time, or on the basis of the unavoidably defective general map series, which was alone available for the purpose. But poor as the component detail must be expected to be, the broad conclusions represented on the maps and in the table should constitute a sufficiently reliable analysis of the character of the land surface of the country as a whole, for immediate purposes.

About four-fifths of the country consists of unproductive or slightly productive desert, steppe, marsh and hill masses. The productive core is divided broadly into two regions within which cultivation is practised regularly. The northern region is fed by rainfall supplemented by perennial streams rising in the mountains and, to a limited extent, by lift from the rivers. The southern region largely depends upon irrigation, supplied by canals drawn from the river system, following winter rainfall. The former may be appropriately called the Rainfall Zone, and the latter the Irrigation Zone. Actually the southward extension of the northern rainfall varies annually, while the date gardens of the Basra Liwa constitute a distinct (and of course economically a very important) study. But this does not affect the correctness of the broad picture presented.

Reference to Table I will show that the region of cultivated and cultivable land within the Rainfall Zone covers about 41,000 square

TABLE I. APPROXIMATE CLASSIFICATION OF LAND SURFACE, 1930

Expressed in square kilometres

Liwa	Total area all land	Hill mass	Cultivated Region: Rainfall Zone: ?2% hill mass	Cultivated Region: Rainfall Zone: Plains	Cultivated Region: Irrigation Zone: Canal fed territory†	Cultivated Region: Irrigation Zone: Machine fed territory†	Additional potentially cultivable territory	Total cultivated and cultivable region	Territory containing tapu holdings	Size of holdings in mishara*: 1-100	101 to 500	501 to 1,000	Over 1,001
Mosul	45,800	9,350	190	14,580	—	—	270	15,040	7,870	—	—	—	—
Arbil	16,600	7,620	150	7,010	—	—	—	7,160	2,420	7,418	728	500	—
Sulimani	9,500	6,400	130	2,420	—	—	—	2,550	2,280	—	—	—	—
Kirkuk	20,800	—	—	12,090	—	—	3,240	15,260	6,280	—	—	—	—
Diyala	16,200	—	—	710	2,760	90	260	3,820	3,410	4,092	—	546	—
Baghdad	22,100	—	—	—	1,710	2,270	890	4,870	1,500	162	220	120	360
Dulaim	124,500	—	—	—	920	630	20	1,570	920	2,344	109	121	3
Karbala	21,200	—	—	—	660	—	20	680	620	—	—	—	—
Hilla	8,100	—	—	—	4,570	330	1,630	6,530	2,380	452	364	98	82
Kut	16,400	—	—	—	4,680	3,860	2,170	10,710	2,580	—	—	—	—
Diwaniya	83,000	—	—	—	3,770	2,180	5,520	11,470	2,270	8,378	—	155	69
Muntafiq	38,700	—	—	—	4,440	270	370	5,080	6,260	—	—	—	—
Amara	19,700	—	—	—	5,670	1,010	—	6,680	110	—	10	5	50
Basra	10,900	—	—	—	610‡	60	110	780	1,190	—	—	—	—
Totals	433,500	23,370	470	36,740	29,790	10,700	14,500	92,200	40,090	—	—	—	—

*Where information was available. Such information must not be presumed to be exhaustive. A mishara = 2,500 sq. metres or thereabouts.

†Territories so classified are at present very incompletely irrigated. ‡Tidally watered date gardens.

kilometres, and that within the Irrigation Zone about 51,000 square kilometres. These figures represent 9 per cent. and 11 per cent. of the total land surface of the country respectively. The cultivation is preponderantly of an extensive character. Only a fraction of these zones, possibly from a fifth to a tenth, appears to be actually cultivated in any given year. So that land is available for a very great development of agriculture, when other factors are favourable.

The information given in the table regarding the size of holdings is derived from fiscal returns. Although the classification of these holdings by area cannot be expected to be accurate, the figures possibly give some indication of the frequency of larger and smaller holdings in the districts actually concerned. The latter must not be taken to coincide with the cultivated areas of the liwas themselves.

3. Agricultural Population

3. In any general study of the land tenure of a country it is desirable to know the numbers and distribution of the agricultural population. Thus it would greatly assist in planning development in el 'Iraq if trust-

161 worthy information was available as to the rural population, their main
162 occupations (e.g. cultivation with type of crops, stock-keeping, fishing, reed cutting, the numbers of the sedentary, semi-nomadic and truly nomadic population, etc.). The figures need not be closely accurate, but they should necessarily be sufficiently reliable relative approximations to allow dependable deductions to be drawn from them. But although continuous and painstaking efforts were made to satisfy this need by the liwa authorities, it has to be admitted that no basis exists for arriving at figures that can be utilised with any confidence. Table II contains the best estimates that the liwa authorities were able to furnish; and the Census Department was not in a position to give me any better material. I include the table, because it at least represents the best local opinion of the position under the various heads cited. It should perhaps be

TABLE II. APPROXIMATE POPULATION, 1930

Expressed in thousands

Liwa	Total estimated population	Three principal towns	Nomadic tribal sections	Rural Population			Mean Density per sq. klom. cultivated region
				Settled	Tribal	Total	
Mosul ..	330	70	45	170	20	196	22
Arbil ..	106	—	3	47	56	103	15
Sulimani ..	94	—	15	51	28	79	37
Kirkuk ..	160	—	19	63	78	141	13
Diyala ..	240	—	1	79	160	239	67
Baghdad ..	398	219	2	83	74	167	98
Dulaim ..	147	—	50	30	49	88	95
Karbala ..	90	—	2	83	5	88	136
Hilla ..	103	—	—	30	73	103	21
Kut ..	170	—	—	60	110	170	30
Diwaniya ..	228	—	58	79	101	180	40
Muntafiq ..	340	—	30	35	295	330	72
Amara ..	238	—	—	36	202	238	36
Basra ..	190	46	10	34	100	134	284
Totals ..	2,834	344	234	886	1,361	2,346	30*

* Mean density total 78,000 sq. klm. cultivated region.

noted more particularly that it was found impossible to separate in any systematic way those engaged in urban, from those engaged in rural, pursuits. Finally, only the populations of Baghdad, Basra and Mosul were excluded from the latter. This explains the misleading density figure for the Karbala Liwa. It should also be noted that the figures given for the agricultural population include all those engaged in rural occupations, other than genuine nomads.

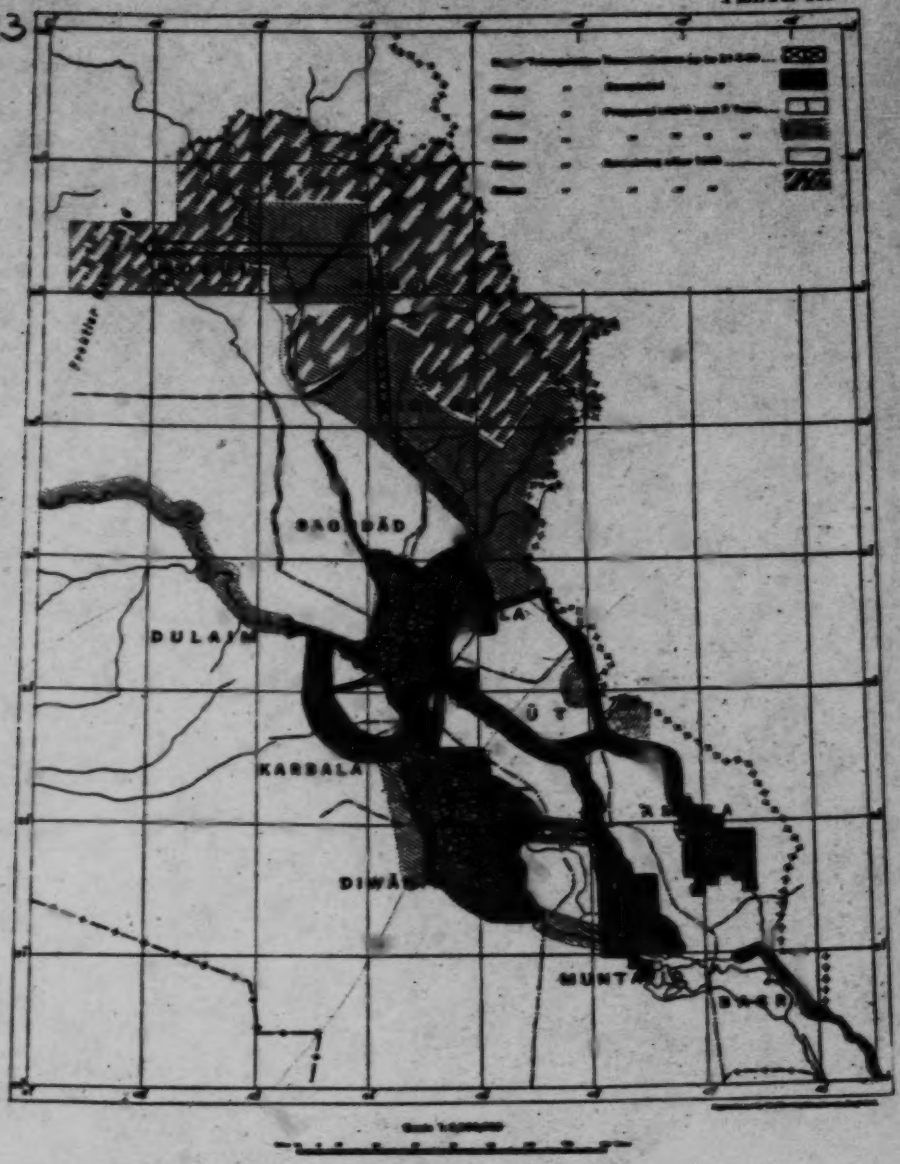
So far as the figures can be accepted the mean density of the rural population per square kilometre of the cultivated region works out at about 19 in the four liwas of the Rainfall Zone, and at about 35 in the five most typical liwas of the Irrigation Zone. These figures are very low, especially for the potentially fertile irrigable lands of the latter; but there is no reason to think that they err on this side. However, it will be appreciated that dependable statistics of the agricultural population are needed to enable development of the country to be pursued to the greatest advantage and with the greatest economy.

166 The extreme mobility of the majority of the population, especially
185 throughout the Irrigation Zone, is an important factor in the consideration of development schemes of all sorts, having regard to the general sparsity of the population and the limited resources of the country. If work can be concentrated on such schemes in a few of the most suitable areas, and facilities can be given to the population to colonise them as opportunity and occasion justify, much more rapid and satisfactory results will be obtained for the same effort and expenditure in a given

Z: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

DIAGRAM ILLUSTRATING PROGRESS
OF TRIANGULATION SYSTEM
IN 'IRAQ

PLATE III



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2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

time, than if attempts have to be made to carry out development in a scattered and incomplete manner throughout the whole country at once.

4. Land Revenue Returns

4. It was my original intention to devote one part of this report entirely to a study of land revenue questions. For although in some respects a matter for independent consideration, the effect upon all tenures of land of the burden of any land revenue demand (whether in cash or kind) and the methods by which it is imposed, is profound. But since I left el 'Iraq a drastic change in the land revenue system has been enacted.* It will clearly not be helpful to comment on land revenue methods that have been superseded. And I understand that the new laws are of a specifically provisional nature and that their imperfections are realised, so that it seems of equally little use to comment on them. But although no useful purpose seems likely to be served by the discussion of the displaced land revenue system now, the three accompany-

* Law for the collection of Istihlak (Consumption) Tax. No. 69 of 1931. Law for the collection of Land Rent. No. 85 of 1931.

TABLE III. ANNUAL COLLECTIONS OF LAND REVENUE, 1928-9

In lakhs of rupees

Year	Summer Crops	Winter Crops	Dates	Vegetables	Other fruits	Tobacco	Miscellaneous	Totals
1923	34·20	44·75	16·73	9·62		1·30	2·24	108·84
1924	34·15	47·24	19·34	6·09	2·33	3·70	0·02	112·87
1925	46·13	69·20	22·79	6·03	2·44	1·96	0·04	148·59
1926	42·16	59·94	18·25	5·36	2·47	3·67	0·02	130·89
1927	39·32	59·07	21·60	4·70	3·46	2·98	0·01	131·14
1928	40·94	59·93	23·30	4·63	3·76	2·91	0·04	135·50
1929	87·77		18·22	3·68	3·11	1·87	0·07	115·42
Totals	373·22	391·57	140·93	36·63	21·07	17·39	2·44	883·25
Averages	39·04	55·94	20·13	5·23	3·01	2·48	0·35	126·18

TABLE IV. DISTRIBUTION OF AVERAGE LAND REVENUE, 1928-9

Under forms of assessment prescribed by Law 40 of 1920

Crops	Average receipts 1923-9		Percentage distribution under various forms of assessment prescribed									
	In lakhs of rupees	Per cent. of total	By unit of area Art. 6	Estimation Art. 9	Repeasurement Art. 10	Tree counting Art. 11	By plough units Art. 12	At market centres Art. 14	At Customs and Excise Offices Art. 15	By unit of life Art. 17	Lease by auction Art. 20	Three, four, or five-year agreements Art. 21
Summer crops	39·04	30·6	6·1*	8·5	7·7§	—	—	—	—	4·6	0·6	3·1
Winter crops	55·94	45·9	6·4	12·4	2·3	—	9·2	—	—	6·9	0·5	8·2
Dates ..	20·13	15·3	9·2†	0·3	—	5·8	—	—	—	—	—	—
Vegetables	5·23	3·6	1·2‡	—	—	—	—	2·3	—	0·3	—	—
Other fruits	3·01	2·3	0·1	0·1	—	1·6	—	0·1	—	—	—	0·4
Tobacco ..	2·48	1·9	—	—	—	—	—	—	1·9	—	—	—
Miscellaneous	0·35	0·2	—	—	—	—	—	—	0·2	—	—	—
Totals ...	126·18	100·0	23·0	21·3	10·0	7·4	9·2	2·4	2·1	11·8	1·1	11·7

This table is intended to illustrate the operation of Law 40, applied during an average year under conditions existing in 1929. Actually estimation was principally resorted to before 1926, the various new methods of assessment having been increasingly used subsequently.

* Largely Amara rice, Baghdad and Kut summer crops and rice included in Basra jarib tax.
† Basra jarib tax.
‡ 1930 figures, previously under Art. 14.
§ Mostly Diwaniya rice.

2: Dowson G-5 (1929-30) 1932 MH Iraq MH

651 TABLE V. NUMBERS OF SEPARATE LAND REVENUE PAYMENTS, 1929

Expressed in thousands

	Summer crops	Winter crops	Dates	Other fruits	Tobacco	Totals
Mosul	10·2	38·7	—	14·6	1·3	64·8
Arbil	2·1	9·6	—	3·6	—	15·3
Sulimani ..	4·0	5·0	—	4·3	3·9	17·2
Kirkuk	1·0	9·1	0·1	0·7	—	10·9
Diyala	1·4	6·0	10·6	6·8	—	24·8
Baghdad ..	2·0	7·6	2·1	1·3	0·5	13·5
Dulaim	2·3	4·5	3·0	0·8	—	10·6
Karbala ..	0·4	1·3	8·7	3·6	—	14·2
Hilla	2·5	6·6	9·8	2·3	—	23·2
Kut	0·4	0·6	1·5	0·8	—	3·3
Diwaniya ..	10·0	9·6	16·3	3·6	—	39·5
Muntafiq ..	1·6	1·9	15·5	0·7	a few	19·7
Amara	0·1	0·2	0·2	0·1	a few	0·6
Basra	0·2	0·4	15·4	0·2	—	16·2
Totals	36·2	103·3	83·2	43·4	5·7	273·8

ing tables, which were prepared with a view to such discussion, are still of interest and value. And it should be added that the great difficulty experienced in obtaining precise information about the land, did not refer to the financial statistics of land revenue or to the nature of the methods in force. For a number of past years full and clear reports of the working of the Revenue Department have been published.

The three tables explain themselves: but it should not be overlooked that Table V is concerned with the number of land revenue payments made, not with the number of land revenue payers. Thus the same payer (or group of payers) may pay on a summer crop, on a winter crop and on a date grove. And each payment may represent more than a single parcel. Fuller study of the original returns should enable some idea to be obtained of the total number of holdings in the country.

5. The Land Survey

423 5. Before turning to a consideration of the methods of land tenure in force it is desirable to consider briefly the existing position and prospects of the national land survey. It is the duty of such a survey to provide exact and detailed knowledge of the land surface of the country, primarily—but far from exclusively—in the readily assimilable form of the graphic miniatures of the ground which we term maps. The critical importance of the survey in relation to all measures of land reform, whether of tenure or development, cannot be stressed too emphatically. A scientifically dependable and functionally suitable survey is an indispensable condition of the successful execution and maintenance of any comprehensive measures of land reform. All experience shows that to attempt such reforms in the absence of an adequate survey is to build without a foundation in the dark. The intricacy and magnitude of the task of executing and maintaining a national survey is not usually realised, probably because of the deceptive simplicity of the form in which the mass of information collected is presented to the public. The great gulf between a trustworthy and an untrustworthy survey, and the conditions necessary to secure the latter are even less commonly appreciated. It is most desirable that this should be rectified; for while a trustworthy survey is indispensable to all comprehensive measures of land reform, an untrustworthy survey is a dangerous misuse of public funds.

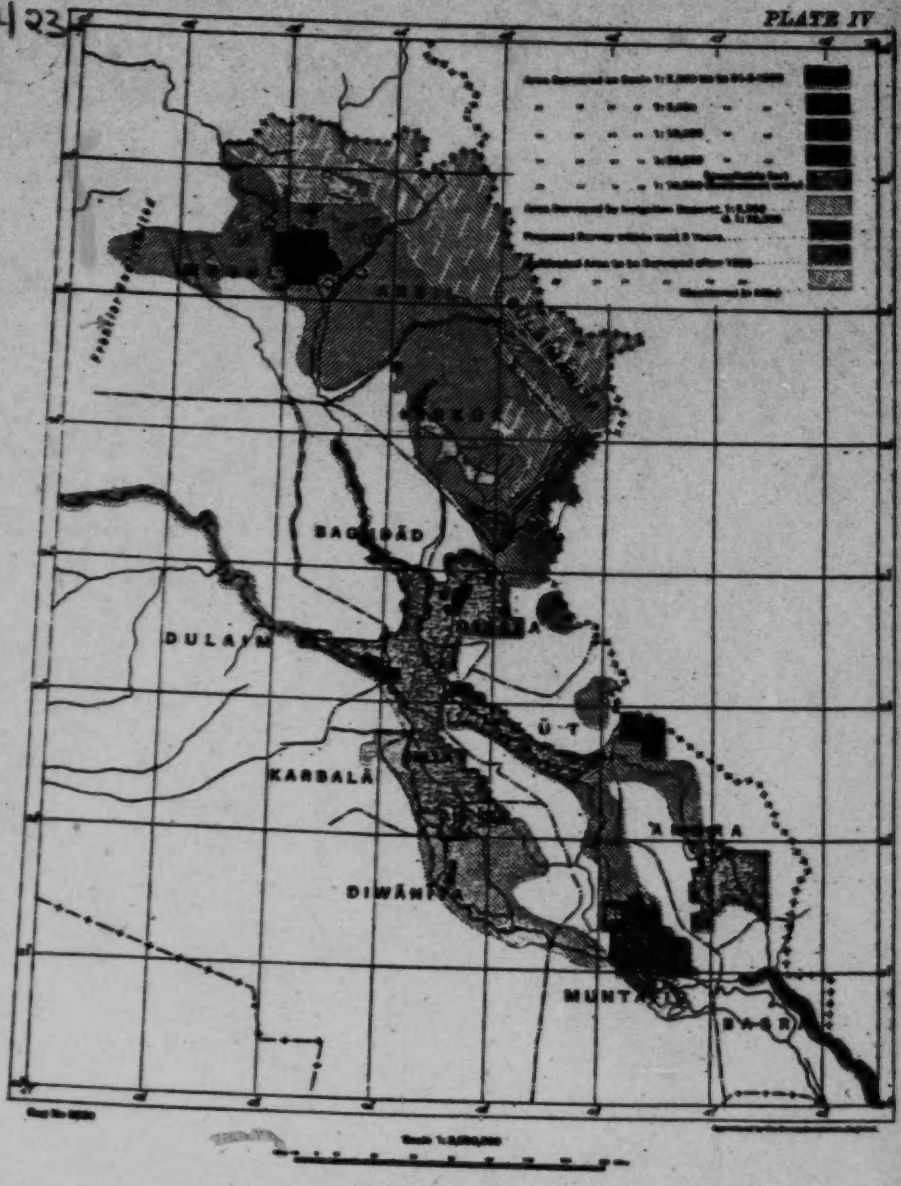
000 The first and most important condition to be satisfied is the provision and maintenance of a thoroughly dependable framework, on

2: Dowson G-S (1929-30) 1932 MHI Iraq MHI

MAGRAM ILLUSTRATING SURVEYS
IN 'IRAQ

4/23

PLATE IV



[facing p. 15]

2: Dowson G-5 (1929-30) 1932 MHl Iraq MHl

000 which the maps can be built up and by which their accuracy can be controlled. The main components of a survey framework are normally, and preferably, furnished by a network of accurately determined points, arranged for purposes of mathematical control in several series of well-shaped triangles of decreasing size. It is essential that these points should be well marked on the ground and that the marks should be carefully preserved and safeguarded against disturbance. Subsidiary points in such a framework differ according to the nature of the ground, the character of the work and the scale on which it is to be mapped. Such subsidiary points may be added in conjunction with, or just prior to the execution of the detail work.

The selection of the sites of the major, or largest series, of triangulation points calls for special aptitude and experience, while the determination of their geographical positions demands highly skilled observation and mathematical computation. It is only when the major triangulation network has been constructed, observed, computed and linked up as a whole, with the corresponding networks in neighbouring countries, that a finally satisfactory foundation for a national survey has been laid. But this may take a long time; and for immediate practical purposes the important steps are to get (i) the major triangulation completed in large blocks well in advance of all other work, and (ii) the ground marks protected. The subordinate series of triangulation, any subsidiary systems of reference points, and the ultimate detailed survey, are then progressively controlled, so that the land survey is consistent and dependable as a whole and no serious error can pass undetected.

423 Plate III illustrates the progress of the major and minor triangulations in el 'Iraq. It will be seen that the survey framework of the country is in a very unsatisfactory condition. It is absent in the north, while in the south the minor triangulation has preceded the modest backbone of major triangulation projected. And unfortunately the permanence and reliability of the work is being continuously undermined by the removal of the indispensable ground marks by mischievous or ignorant persons. Plate IV illustrates the position of the detail survey throughout the country. It will be seen that several solid blocks of map work mainly on a scale of 1:10,000 have been done in the south on a framework of minor triangulation. The maps are purely topographical maps, sometimes contoured to meet the requirements of the Irrigation Department. The quality of the field work so far as I was able to see it was good; but the publication of the maps is in a very backward state.

The progress as well as the general value of the work has been very adversely affected in the past by uncertainty in programme and in resources, and by continual diversions of survey staff to meet scattered and often ephemeral demands anywhere and everywhere. The number and insistence of these demands emphasises how widely the need for a complete national survey is felt. And it was doubtless impossible to avoid and difficult to restrict these sporadic demands, when endeavouring to introduce modern administrative and technical methods in a country that was virtually unmapped. But nothing has retarded the land survey of the whole country so much as the obstacles to steady and economical progress that have been imposed by continual variations in programme, in general objectives and in resources.

According to the present programme, work on the 1:10,000 scale should be completed throughout the Irrigation Zone by the end of 1933 or 1934. At the same rate of progress the extension of the work over the plain area of the Rainfall Zone may be expected to take another six years. But this forecast will only be realised if a steady programme is adhered to, and if effective measures can be taken to prevent the removal of ground marks. Important weaknesses in the organisation of the Survey Department are considered in Part VIII of this report.

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2: Dowson G-5 (1929-30) 1932 MH Iraq MH

PART III.—EXISTING CONDITIONS. STATUTORY TENURES

1 AND 2. STATUTE LAW

423 671 1. The foundations of the statute law governing the tenure of land in el 'Iraq are the (old) Ottoman Land Code of 1274 (1858), and the Land Registration (Tapu)* Law of the following year. These laws were supplemented, amended, modified, amplified and curtailed by subsequent Ottoman legislation, or orders deemed to have the force of law, while the country remained under Ottoman jurisdiction. And there has also been a certain amount of recent el 'Iraqi legislation applying to land tenure. The basic concepts of the two first laws are for the most part generally recognised, although the position of the statute law on land tenure is far from clear on many points and although, as will appear more fully later, throughout the majority of the land, these laws have been largely disregarded.

423 The Land Code recognises five legal categories of land :

(1) Mulk (El arazi el mumluka). Land held in undiluted ownership assimilated to that of chattels. Such ownership is governed by the provisions of the Sacred Law and not by those of the Civil Statute Law.†

(2) Miri (El arazi el amiriya). State land the usufructuary possession (tesaruf) of which is granted out on the registered tenure prescribed in Book I of the Land Code.

(3) Waqf (El arazi el muqufa). Land, some right over which has been dedicated to a pious purpose.

(4) Matruka (El arazi el matruka). Land "left" or specially reserved for some public purpose.

(5) Mewat (El arazi el mewat). Dead or unreclaimed land.

This classification has never been applied as a whole in el 'Iraq and is not applicable as it stands. The third category (Waqf or Dedicated Land) is redundant. Land must belong to the first category (mulk) to be truly dedicated in waqf in accordance with the Sacred law. The untrue dedication, known as takhsisat (appropriated) waqf, is restricted to interests in the revenue arising from the land (tithe, fees, etc.) and leaves the category of the land unaffected. For practical purposes untrue waqf is confined to dedication of interests arising from land of the second category, but takhsisat waqf in mulk interests (e.g. tithe) may exist.

While the third category is unnecessary no provision is included for cultivated and cultivable land that is retained in the legal possession, as well as the legal ownership, of the State. State land of the second category (miri) is confined to land of which the legal possession is granted out on registered tenure to third parties for exploitation. State land of the fourth category (matruka) is land reserved for public purposes. State land of the fifth category (mewat) is waste unexploited land.

* Turkish dictionaries derive this word from the verb tap-mak to worship, whence also act of homage, an acknowledgment of oneself a vassal, especially by the acceptance of a feudal fief. Hence a title deed, etc.

† Mulk means property. Everything that is owned, whether movable or immovable, is mulk. Immovables classified as mulk (i.e. property) are in the absolute ownership of the proprietor. "Every man can deal as he likes with his mulk," Majelle Art. 1192.

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

Even the terminology of the law is generally misunderstood and misapplied. Thus, by a curious but comprehensible reversal, the term miri used in the Land Code to denote State land of the second legal category (granted out on registered tenure) is applied in el 'Iraq to land retained in the legal possession of the State. On the other hand, land conforming to the second legal category is loosely described as tapu, or as arazi mafuwida,* or even sometimes as mulk, in contradistinction to the local use of the term miri just mentioned.

Again the distinction made in law between State land of the second, the fourth and the fifth categories is ignored. Indeed I found the words matruka and mewat, and even mahlul (loosed), used purely descriptively and interchangeably for waste lands. But the formal connotation of the last term was recognised if specifically raised.

Evidently a classification of land that is to constitute a useful basis for the land law should conform to, and comprehend, all real differences which require different treatment. Subject to consideration of points still awaiting decision, four categories may be provisionally suggested as necessary and sufficient to enable present law, present practice and present requirements to be reconciled:

(*a*) Mulk or land held in private ownership as at present.

(*b*) Miri or State land retained in the full legal ownership and possession of the State which may be exploited directly or indirectly at its discretion, subject to due recognition of established occupancy rights.

(*c*) Tapu or State land, the legal possession (tesaruf) of which is granted out on the registered tenure laid down in Book I of the Land Code.

(*d*) Matruka or State land specifically reserved by law for public purposes. This corresponds to the fourth existing legal category but some more readily understood term (e.g. manafa' umumiya) would be preferable.

While this provisional classification recognises two categories of State land (*b* and *c*) since the State retains the full legal ownership (raqaba) in both cases, the term miri is in current practice restricted to State land of which the usufructuary possession (tesaruf) has not been granted out. The term tapu or arazi mafuwida is applied to State land the tesaruf of which has been granted out. Although not in conformity with the terminology of the law, the terms miri and tapu used in this way are clear and understood in the country. They are consequently adhered to throughout the remainder of this report unless otherwise stated.

The utility of category (*d*) may not at present be recognised. As the country develops it should become an extremely important class of land, which may not be leased or granted out or exploited in any way except in accordance with the public purpose enacted. Public utility land should only be created and annulled by law and should receive special protection from encroachment, damage and improper use. Timely provision of this nature will save the loss of many valuable public rights and much public expenditure later if the country develops. As instances of such public utility lands may be cited (i) all widths occupied by or reserved for the service of public roads, railways and waterways of all sorts, (ii) sites of historic importance or public interest, (iii) areas required for reservoir or flood storage, for public buildings or for other innumerable national purposes.

*"This term seems to have no legal basis. It appears to have been adopted as an equivalent of the expression "alienated lands."

2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

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2. The introduction of the Ottoman Land Code, and more particularly of tapu tenure, by Midhat Pasha about 1870, was a serious attempt at land reform in el 'Iraq which failed through no want of perseverance or sincerity of purpose. It failed for two reasons, either of which would have been decisive. It was foredoomed to fail, as it failed generally throughout the Ottoman dominions, because the administrative experience and machinery, the technical knowledge and the qualified staff needed to accomplish so formidable a task were lacking. It was also foredoomed to fail because it attempted prematurely to cast in a rigid (and an alien) mould the fluid practices of a still preponderantly primitive society. Land reform cannot be imposed on a country as an exotic by any outside agency. To be successful it must be suited to local needs, conform to local ideas and conditions and be established gradually by Government and people together. Essential preliminaries to success were a sympathetic adaptation of the Code to meet these requirements and a sympathetic initial investigation and stabilisation of existing occupancy and other customary rights. Moreover the construction and maintenance of a reliable Land register would have been indispensable. These were not the only essentials of success, but they are those that chiefly concern us here. Probably none of them were sufficiently understood at the time. Certainly none of them were satisfied. While the causes of the failure must be analysed if a repetition of these old errors is to be avoided in a modern and better managed effort now, they must be recognised to have been not unusual ones at the time. And although the Ottoman Land Code has never been properly assimilated or generally applied in el 'Iraq, yet it has gradually affected both local concepts and local practice deeply. It would therefore in my opinion be an error resembling that originally made, to abandon this Code now for an entirely strange one as Turkey herself has done. The old Ottoman Land Code is no longer an entirely foreign code and it can be more readily and more closely adapted to local needs than any new importation. It unquestionably requires to be drastically mended, but it certainly should not be ended.

3-5. Registered Tenure

3. Outside of the towns and certain garden reaches the private ownership of land (mulk) is rare in the country. As already noted true waqf land can only be constituted from mulk and is correspondingly limited, while untrue waqf is restricted to a dedication of some financial interest in the land affected. There is little differentiation in the Sacred law between movables and immovables held as private property (mulk). But an Ottoman law of 28 Rajab 1291 (September, 1874) required that the latter (including trees and buildings on miri land) should all be registered and forbade the unregistered ownership of such property subsequently. A certain amount of mulk immovable property is registered in el 'Iraq, but the compulsory registration of such property has never been practicable or systematically attempted.

Land reserved for public or communal use (matruka) is not registered as such. It constitutes a small fraction of the whole and, as noted earlier, the distinction between such land and ordinary State Domain is rarely recognised.

With the relatively minor exceptions mentioned the whole land surface of the country—cultivated land, pasture, waste, forest, mountain, desert, steppe, marsh—is in law State Domain of one or other of the two categories (miri or mewat) laid down in the Ottoman Land Code. The legal ownership (raqaba) of all this land is vested in the State; but, as noted, subject to certain important conditions its usufructuary possession (tesaruf) may be granted out on a permanent, heritable,

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

assignable tenure, in accordance with the provisions of Book I of the Land Code and connected legislation. This tenure can only exist in virtue of an express grant from the State. To be valid such a grant must be registered in the Land Registry and be vouched for by a certificate of such registration (tapu sanad). A prescriptive right to a grant of State land in tapu tenure (known as haq el qarar) is recognised by the Ottoman Code, although the exact meaning of certain important conditions of such recognition is still debated. 423

Under the regular operation of the Land Code all State land held and used by the public should be acquired and possessed in tapu tenure. The rights and obligations of this tenure are for the most part admirable. But, as already emphasised, its operation depends upon (i) a systematic initial granting of State land under this form of tenure to those judged best entitled to it, and (ii) the construction and subsequent maintenance to date of an exact and reliable Land Register of the rights conferred or derived thereunder. No systematic initial grant of tapu tenure was made or indeed can have been practicable when the Code was introduced. Consequently tapu tenure remained an occasional and imperfectly realised privilege of the few, instead of the regular tenure of State land it was intended to be. In many cases grants in tapu tenure were no doubt made to those best entitled to enjoy its rights and best able to discharge its obligations. But as a rule grants were made without any satisfactory investigation of conflicting claims. And in nearly all cases the definition of the land, which was purported to be affected, was incredibly ambiguous and vague.

Under these circumstances it would have been impossible to construct and maintain an intelligible and reliable Register of tapu tenure, even if the methods of doing so had been better understood. Actually a study of the working of the Ottoman Land Registries both in el 'Iraq and elsewhere demonstrates that this knowledge was lacking. Indeed the wider experience of the world shows that the construction and maintenance of a reliable Land Register has presented serious difficulties even to the best organised and equipped administrations.

The Ottoman Government had recognised before the war their failure to apply tapu tenure throughout their territories, as well as the basic causes of that failure. And they had enacted legislation empowering a systematic re-investigation and settlement of rights to land to be made vilayet by vilayet. It was intended that this settlement of rights should be based on a cadastral survey and be accompanied by a comprehensive valuation of the land and the establishment of an entirely new Land Register.*

4. The granting of tapu tenure in so many cases throughout el 'Iraq, without proper investigation and settlement either (i) of the rights of those already attached to the soil or (ii) of the boundaries of the parcels which were purported to be affected, sowed a crop of conflicting claims throughout the country, which bore the seed of perpetual discontent and hardship, and in some districts periodically produced violent outbursts of lawlessness. The registered tapu holder (mutasarif), who possibly had family or economic ties with the land, who probably had conformed with the formalities prescribed by a Land Registry Official, and who no doubt acquired his uncertain rights for valuable or other consideration, claimed the position of landowner (mallak).† As such he demanded the landowner's share (mallakiya) in the produce, and asserted his right to mortgage the land and to bring in new cultivators if he wished. [579] [427]

* Ottoman Provisional Law of Survey and Registration of Immovable Property, 1 Rabi Awal, 1331.

† *Mallak* should properly be restricted to *milk* property. A tapu holder is not an owner, but a *mutasarrif* or the holder of registered usufructuary possession (*tasarruf*).

2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

1/23 But occupying cultivators in the South, while recognising tribal
579 allegiance and the State's legal ownership (raqaba) of the land, commonly regarded their tribal group as possessors of the soil by immemorial right, whatever the period of its occupancy of the land might in fact be. They frequently resented any demand for mallakiya, and indeed any claims to overlordship other than those of the State. It should not be assumed that in such disputes one side was invariably unjustly acquisitive or the other side obstinately recalcitrant. Each party doubtless thought that substantial justice lay on its side. Circumstances alter cases and it is neither possible nor useful to generalise on the point. It is the removal of the injury caused by these longstanding differences, alike to agricultural prosperity and to public peace, that is the objective, not the justification or satisfaction of particular disputants. As is well known this need was so strongly impressed on Government by recurring violence along the Hai and in the Muntafiq, occasioned by the perennial disputes arising out of the differences mentioned, that a law regulating the investigation and settlement of the conflicting claims in these areas was enacted two years ago and is now in course of application.*

621 In the northern rainfall zone the people generally lived in regular
622 villages, under the shadow of a local *agha* or other notable, and cultivated the soil and pastured their flocks round about. As there was ordinarily
4/23 more land than men to till it, land was brought under cultivation as
178 required and successive generations commonly tilled the same groups of parcels, alternating fallow with sown. When necessary, the local leader became the intermediary between the people and any central Government that could make itself felt. Thus he compounded for the village tithe ('ushr) and collected appropriate contributions from the cultivators. He settled land disputes in village conclave or otherwise, and his jurisdiction to do so was of no material importance so long as these mediæval conditions prevailed. As civilisation developed, towns became more attractive and communications improved, such local leadership sometimes tended to become absentee landlordship; while with the introduction of tapu tenure many village areas appear to have been wholly or partially registered as the personal possessions of local notables, without any consideration of the immemorial rights of those who had regularly occupied and tilled the land or pastured their flocks thereon. The pinch in these cases seems to have been mainly felt when the lands were pledged, and forfeited, to town-dwelling merchants for debt. The personal touch and interdependence that existed between even the most arbitrary local chieftain and the village cultivators appears not infrequently then to have been replaced by more mechanical efforts to exploit the land from outside and by obstruction to such efforts from within.

4/23 These generalised instances are only intended to serve as illustrations of the evil effects of granting tapu tenure in the past without a thorough study and due safeguard of previously existing rights. No comprehensive or detailed study of these cases is possible here.

5. When the maps from which Plates I and II were prepared were in process of compilation the Tapu Department did its best to show the location and extent of all land held under tapu tenure. Partly owing to the destruction of records by the retreating Turks, but much more owing to the inherent defects of their Land Registry methods, it was not found possible generally to do more than indicate approximately the outside limits of patches of territory thought to be affected. The maximum limits of these groups of territory will be seen, on reference to Table I, to cover about 40,000 square kilometres. It is impossible to say what proportion of the areas included would prove upon due investigation to be reasonably entitled to be held in tapu tenure.

*Law for the settlement of disputes of Muntafiq Lands. No. 22 of April 4, 1928.

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

As already observed the Ottoman Land Code provides that all land other than mulk brought under cultivation shall be held on tapu tenure directly from the State. The actual limitation of tapu tenure throughout the one time vilayets of Baghdad and Basra to a fraction of such land is commonly attributed to two Imperial Ottoman Iradas,* respectively issued about the years 1296 (1880) and 1307 (1891). I was not able to obtain copies of these Iradas; but I understand that the first prohibited further grants in tapu tenure either on payment of valuation fees (bedl mithl) or by auction, and that the second abrogated the right of acquisitive prescription of tapu tenure (haq el qarar) on the ostensible ground that the lands of el 'Iraq were being cultivated on terms of muzara'a (i.e. cultivation in partnership with land labourers). It was held that haq el qarar could only be claimed by persons directly and personally cultivating the lands; while the land labourers were barred because they worked for others. But the practical importance of these Iradas was probably slight. They appear in fact to have been little more than early recognitions by the Ottoman Government of the impracticability of applying tapu tenure under the conditions existing in these vilayets. Reference to Plates I and II and to Table I indicate, so far as the available information goes, that claims to tapu tenure are not appreciably more extensive in the old Deir el Zohr district (corresponding broadly to modern Kirkuk), in which its prescriptive acquisition continued under another Irada expressly to apply, than in the two vilayets in which such prescription was as expressly abolished. In short these legislative decrees were dead letters. Whatever their purport they could not alter, and should not disguise, the failure to apply tapu tenure throughout the country either generally or effectively. This failure still persists and is demonstrated by the well-known inability of Government to-day either to safeguard the rights or to enforce the obligations attaching in law to tapu tenure. The absence or unreliability of the information regarding the position and extent of the majority of the parcels claimed to be held on that tenure is indisputable. This is partially illustrated by the gross uncertainties of the location of such land on Plates I and II.

Nor is the unreliability of the Land Registry records confined to this crucial weakness. They are commonly out of date, and/or incomplete, and/or conflicting, and/or unintelligible, and/or of questionable validity. These defects apply to both forms of registered tenure (mulk and tapu). This state of affairs is generally and rightly realised to be mainly a heritage from the past. It is not due to any ignorance of existing defects or lack of zeal on the part of officers of the present service. On the contrary, I found among them a refreshingly realistic appreciation of past and present weaknesses; while during recent years a sustained and conscientious effort has been made to put the records steadily on to a better basis. There are also excellent features in the Department's procedure which should facilitate the foot and branch reform that is needed to enable the Land Registry to discharge its statutory functions satisfactorily, if and when such a reform can be undertaken.

But although a warm measure of appreciation is justly due to the efforts that have been, or are still being, made to improve matters, the important facts that require to be recognised in summing up the existing position dispassionately are: -

(i) that tapu tenure as at present nominally applied, neither accords the security, nor ensures the discharge of the obligations, of that tenure as prescribed by law.

* Sometimes termed Sultanic *Firmans*.

2: Dowson G-5 (1929-30) 1932 MHl Iraq MHl

423 (ii) that the operation of tapu tenure depends upon the existence, and maintenance to date, of an efficient Land Register recording clear and unimpeachable rights to definite and locatable parcels of land.

(iii) that such a Register has never existed, does not exist, and cannot be quickly, easily or cheaply created.

And it has further to be recognised that the existing Land Registry necessarily confines its attention to mulk and tapu tenures. It is not in any sense a General Land Registry.

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

PART IV.—EXISTING CONDITIONS.

MIRI LAND (STATE DOMAIN)

1–4. General Situation

1. As ordinarily used in el 'Iraq the term miri land, or State Domain, embraces the entire land surface of the country with the exception of land registered as owned in mulk or held on tapu tenure, the extent of which is unknown. Of the compound total some 78,000 square kilometres is estimated to be occupied by scattered cultivation, and about another 15,000 square kilometres to be capable of cultivation (see Plates I and II and Table I). In the former figure are included the previous Ottoman Crown Estates, which comprised some of the most valuable land in the country. These estates were originally managed by a special estate service (El Dairet el Saniya). The administration, by common repute that has survived both in Palestine and el 'Iraq, was good. These estates were subsequently termed mudawara Lands, apparently because they were "turned over" to the civil administration after the Turkish revolution of 1908. They have since lost their separate identity and become merged in the general category of cultivated miri land, although, of course, their previous circumstances may have to be taken into account when considering the position of the present holders of such lands.

It is desirable at the outset to recognise that the huge agglomeration thus grouped under the name miri, or State Domain, reflects no real uniformity in legal status, customary practice, or actual treatment. Thus, while it is accurate and informative to speak of mulk ownership or of tapu tenure, there is no such thing as miri * tenure in law and an unknown variety of things in practice. Miri land simply represents the overwhelming residue of the country not held in mulk or on tapu tenure. It is none the less reasonable and convenient to maintain this elastic, if negative, category at least provisionally. For it accords with accepted tradition and statutory law (*a*) to regard the State as the basic landlord of all land other than mulk (and its derivative true waqf) and (*b*) to recognise that, whatever the rights of holders of miri land may be, they fall short of those of a duly registered mutasarrif of tapu land. But the powers of the State as such a landlord must evidently be exercised with most careful regard to the history of the land and to over-riding considerations of an equitable, economic and administrative nature, if they are to prove admissible in practice.

The general management and control of miri land, legally vested in the State, is nominally entrusted to the State Domains Section (qism el amlak el amiriya) of the Ministry of Finance, until recently the State Domains Department of the late Ministry of Irrigation and Agriculture. Some such central State Domains Office is essential; while the keenness and public spirit that I encountered in this service cannot be too fully recognised. But the Department was quite inadequately staffed and equipped to discharge even the practicable part of its colossal titular duties. Actually in the prevailing absence of intelligible maps and

* Using the term in its customary local, as opposed to its legal, connotation (see iii. 1).

647 records of miri land, such management and control as is possible of these
423 heterogeneous and extensive territories must be carried out primarily in the district by persons in direct touch with the people and the parcels affected. Many questions are no doubt settled by the customary social leaders as elsewhere (e.g. tribal sheikhs) and never reach the administration. Those that do may in some cases be dealt with by one of the few local officers of the State Domains or even by another Department (e.g. on the Yuseffya by the Irrigation). But ordinarily the effective agents of Government in the control of miri lands are the officers of the provincial administration on the spot, who must act for the most part according to their individual judgment or on the instructions of their provincial superiors in each case. This local control is naturally subject to the direction, and occasionally to the intervention, of the State Domains service or the Ministry to which it is responsible. It is also necessarily subject to intervention by the Ministry of the Interior or of any other Ministry, whose public responsibilities may be affected by some action taken. It is further subject to intervention by any Deputy or influential private person who may be concerned or interested.

423 In a limited number of cases, disputes affecting the holding of miri
622 land are decided under the Tribal Civil and Criminal Disputes Regulations, because of their reaction on tribal peace and public security. But since such disputes in theory merely concern the domestic management by Government of its own estates, they do not as a rule fall within the jurisdiction of any regular Court of Justice. Reference has already been made to the general failure to introduce the Land Code and more particularly tapu tenure effectively. Consequently by the side of a truncated and semi-atrophied Statute Law there have survived throughout the greater majority of the land, methods of acquiring and holding land which have never been regulated by law at all.

423 2. An attempt has already been made to illustrate in broad outline
427 the conditions under which land has been for the most part occupied and cultivated in the rainfall zone. There are commonly two classes of people concerned. Firstly (*a*) the larger man, who may be the local Agha or a small capitalist who has helped to develop the land by providing funds, seed, etc. Secondly (*b*) the actual cultivator who, in the mountainous districts, has tamed the wilderness by building terraces, constructing water channels, clearing the ground, etc., and who, in the plains, has similarly, if less laboriously, reclaimed the land by regular tillage and fallow. It is evident that in actual fact a partnership commonly existed or exists between these two classes.

Now it is generally accepted that the intention of the Ottoman legislator, when promulgating the Land Code, was to establish the actual cultivator on the land; and when that cultivator has remained on the same land and effected improvements of a capital nature by his labour, his claim is clear. But the claim of the larger man instanced, who will almost invariably have co-operated in some indispensable way (e.g. by according protection, providing capital or essential assistance), who has very likely been acknowledged as landlord (mallak) and perhaps regularly received mallakiya, cannot be equitably or advisedly disregarded. Investigation on the spot would be needed to weigh the respective claims in each case; but it can be seen that, broadly speaking, local conditions have often produced an association in the development and cultivation of the land between local overlord and cultivating holder in these regions, in which both have rights that should be recognised in their mutual interest as well as that of the country at large.

423 In the Irrigation Zone and throughout the desert borders the Turks
619 found the land for the most part in the hands of tribal confederations.

The influence of these confederations waxed and waned with changing personalities and circumstances. The original tribes (ashaiyir) of el 'Iraq were, of course, pastoral nomads following the grass with their herds of camels, sheep and goats. As throughout history generally, when they found that cultivation was economically advantageous they began to settle. Without going into earlier happenings, it is evident that the Ottoman Government were never in a position to exercise any systematic control of the large areas of miri land throughout the country. Under the conditions that commonly prevailed the authority of the Government ran slowly outside the larger towns, while for the most part the effective local and social units were the tribal confederations or their component groups. These groups, larger or smaller according to circumstances, occupied and used such areas of land as they desired and were able to hold against rivals. The territorial hold of tribal groups naturally varied in stability. It varied with the varying power of rival or associated groups and their need for the land. And it was doubtless always amenable to special exertions of authority on the part of the Central Government. But subject to such vicissitudes, innumerable tribal groups exercised the effective control of miri land from day to day throughout the majority of the country. 4/23 619

When land was brought under cultivation a prescriptive right to such occupation was usually asserted. These claims were not limited to the parcels actually tilled, for cultivation shifted annually to offset the exhaustion of the soil and in response to other variables, while provision for prospective cultivation was also included. Such provision for the future was of particular importance in the rice areas, where the rice-growing fringes of the land encroach slowly year by year on the marshes. In these valuable tracts the rivalry between adjoining tribal groups is now intense and calls insistently for competent independent regulation in the general interests of rice cultivation and the orderly development of the steadily advancing waterways. Elsewhere, apart from favoured spots, where special facilities for irrigation or fruit-growing exist, there is still a dearth of the agricultural population needed for the development of the country.

Prescriptive claims to pasture wandering flocks and herds still remain more extensive than such claims to cultivation: and, although they preponderantly apply to the bordering desert and steppe, they also affect the regularly cultivated areas. Indeed the right to browse flocks on immature barley (ghasil) is still widely practised. 423 233

All these customary prescriptive claims to rights of cultivation or pasture, may be asserted long after the uses on which they are based have ceased. Thus I heard of numerous cases of tribal groups who had migrated from one district to another, possibly many years ago, and yet on due occasion advanced prescriptive claims to the area they had abandoned as stoutly as they maintained their right to the lands they had since occupied and used. These occasions were usually some favourable change in the conditions of the abandoned area, e.g. the provision of irrigation facilities previously lacking. It need hardly be suggested that deliberate voluntary abandonment of the use of an area for any purpose should extinguish any prescriptive claim to such use. 423

8. A great impulse has been given to the permanent settlement of the tribesmen during the last decade by the improvement—almost the creation—of communications, by the growth of law and order, by the installation of pumps throughout the riverain tracts, and by the taste for modern civilisation induced by such things as motor cars, gramophones, better dwellings, more frequent visits to towns. Throughout the countryside the camel hair tent of the Bedu' has been giving way to the 166 178

2: Dowson G-5 (1929-30) 1932 MHl Iraq MHl

K6 178 reed mat hut, and the mat hut to the mud, or even the burnt-brick building. This movement has naturally been accompanied by a weakening of tribal cohesion and tribal authority, as the machinery of the provincial administration of Government has penetrated into the less accessible regions and as increasing numbers of the population have been brought individually in touch with local provincial officers over their daily affairs.

166 423 651 619 The development of direct dealings by the local provincial officer (mudir) with small landholders and cultivators in his sub-district (nahiya) over land and land revenue questions has naturally tended, wherever it has been in operation, to transfer the effective control of miri land increasingly from tribal influence to such officers. In many liwas I was afforded evidence of the numbers of smaller men paying their land revenue directly to provincial officials and occupying the position of smallholders, either as heads (sirakil) of minor tribal or other farming groups, or even on a more individual footing. And everywhere I was advised tribal disintegration was accelerating, everywhere the tribesman was becoming an individualist and wanting his individual holding. The movement is not, of course, new. Under Turkish administration it no doubt proceeded wherever the authority of Government was effective: but its range was necessarily more circumscribed and the impelling forces much less. Nor can it be counted upon to continue. If the provincial administration deteriorated again some reversion to, and strengthening of, tribal influences would be natural.

423 619 4. In the numerous discussions that have taken place during recent years regarding the legal recognition of customary prescriptive claims to miri land, more particularly in connection with the installations of pumps, the term *lazma* came to be generally applied to these claims. So far as I have been able to ascertain, the term lazma was applied in Turkish times, among other words, to the customary prescriptive claim of the tribe to land already mentioned. It was represented to me that this might be more correctly and explicitly defined as a right of occupation and cultivation (haq el sakna wa zira'). Within the area concerned the tribal or sub-tribal sheikh would allot the land to adult males of the tribe according to tribal custom, and to be held subject thereto. There was no personal lazma right. Allotments to individual tribesmen could be, and frequently were, resumed by the sheikh.

423 Since the war the conception of a tribal or sub-tribal lazma seems to have weakened and that of a corresponding prescriptive claim of an individual or smaller group to have been to some extent substituted. The appropriateness of the term in the latter sense is disputed; but regarded as a label for any prescriptive claim to occupy and hold miri land, it seems to have held the field and to have been commonly understood and accepted.

423 427 According to prevailing theory all holders of miri land are tenants at will of the State. The land is supposed to be leased by an annual terminal agreement (shartnama). In practice, although such agreements may, and do, exist, they are far from being an indispensable, or even an ordinary feature of the occupation and use of miri land, even in districts most completely under central Government control. And it is not pretended that any annual review is made, with renewal or cancellation even of such agreements as do exist, still less that any systematic record and control of the innumerable theoretical leaseholders of miri land throughout the country is maintained. Indeed the mere administration of any such annual leasing of the numerous, enormous and widely distributed parcels of miri land is beyond the ability of any central

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Government Department, certainly beyond the power of the organisation and resources so far devoted to the purpose. 423 427

This is not to say that no systematic efforts have been made to put the tenure of miri land on to a more secure and orderly basis. Many such efforts have been made throughout the country by Provincial Officers, the Irrigation Department, the Survey and others. Foremost among them must be mentioned the periodic revenue settlements in Amara, which not only defined the limits of the various tribal interests there, but have also tended to stabilise many lesser holdings. A valuable fiscal survey of a large part of the Basra Date Gardens has been done. A business-like survey, allotment and record of land accompanied the construction of the Yuseffya, and other canals: and pains have been taken to keep these records up to date. In the Dulaim liwa a careful list of all the holders of recognised parcels of land has been compiled and subsequent changes noted. Other instances could be given. Naturally, all the resulting compilations have serious imperfections regarded as permanent records of the rights admitted to miri land: but this was not usually their primary purpose and such imperfections were inevitable in the conditions under which the investigations had to be made. And whatever the imperfections of such undertakings may be, they deserve grateful recognition and they should materially facilitate further stabilisation of tenure. 427 185

But it must none the less be admitted that these were all detached uncorrelated efforts owing no inspiration to any concerted attempt of the Central Government to improve the position of the mass of holders of miri land. Broadly speaking, those who occupy and cultivate miri land are allowed to do so in the absence of more influential opposition. Possession is ordinarily nine points of the law: but neither long possession nor any other mode of acquisition confers security. Personal influence with the most effective arbiter is commonly the decisive factor at any moment in any particular land dispute: and anyone may find the most convincing claims set aside. Moreover, any dispute may be reopened at any time if circumstances promise a more favourable consideration of a disappointed party's case.

Having regard to the history of the land, the widespread acceptance of tribal rather than individual rights, and the extensive and ill-defined areas affected, this state of affairs is not really remarkable: but it none the less calls for recognition and progressive remedy.

3-7. Pump Development of the Riverain Tracts

5. As is well known there has been a rapid and extensive development of irrigation by privately owned pumps during the last ten years throughout the high level tracts bordering the main waterways (see Plates I and II). As is also well known, the confident expectations of an early and profitable return on the considerable sums sunk in this development have been largely disappointed. 312

Persevering efforts have been made to obtain consistent and comprehensive statistics of the numbers of pumps erected, of the horse power of those pumps and of the areas irrigable by them: but owing to the records having been differently dealt with at different times and in the various liwas and departments concerned, it has not been found possible to do so. Although this is disappointing, in view of the interest and importance of this development, it is not surprising. And I have none the less been enabled to illustrate the rapidity and extent of the

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312 movement in Table VI clearly, if not as completely and as accurately as I hoped to do. Although the figures given are incomplete and inexact in places they can be relied upon in the aggregate to furnish a trustworthy general picture of events. It will be seen that whereas in 1921 there were probably something like 140 pumps averaging about 11 horse power installed almost exclusively in the Baghdad and Amara Liwas, in 1929 there were over 2,000 pumps averaging from 25-30 horse power extending along all the principal waterways of the country. On the estimated basis of 50 *misharas* * per horse power the area irrigable by the former was about 200, by the latter about 7,400 square kilometres. According to Table I the total area of the riverain tracts affected is over 10,000 square kilometres; but only a fraction of this can be annually cultivated. The data are crude and the results must be regarded merely as rough approximations: but they indicate the wonderful extension of private pump irrigation that has taken place during the last ten years. It is [439] also interesting to note that the importation of pumps for irrigation purposes during the ten years 1920 to 1929 were 28, 110, 42, 18, 157, 157, 288, 288, 463 and 570 respectively, or a total of 2,066.

It is my duty in this report to consider this development primarily from the point of view of land tenure and in that connection to make some criticisms about the methods of land acquisition adopted that appear obvious enough now. Seriously as I think these errors have jeopardised the success of many of the pump undertakings, this should not be allowed to obscure the beneficial character of the general effort made, the valuable safeguard against famine that it provided, and the [166] powerful incentive to settle on the land that it created. And if the movement had not unfortunately coincided with the severest economic depression that the civilised world has encountered, the effects of the initial mistakes made would have been less prompt and less serious.

241 6. The general failure of a development from which so much was
464 hoped, is ascribed jointly and severally to a number of causes. Among
465 these may be mentioned (*a*) the absence of a suitable paying summer
439 crop, (*b*) the shortage and indisciplined character of available labour, (*c*) the prevalence of the share system of payment for labour and the consequent dislike felt by agricultural workers for crops that cannot be shared on the field in kind, (*d*) the lack of competent and dependable local agents and mechanics, (*e*) the poor and dirty quality of much of the produce and the consequently poor reputation of Iraqi agricultural commodities in the world's markets, (*f*) the defects of internal and the costs of external transport, (*g*) the general economic depression of the world and the glut of the world's markets with grain.

185 The question is such an important one, not only from the point of view of those who have sunk money and effort in these enterprises but also owing to its effect upon the prosperity and well-being of the whole country, that the Government for a long time have sought remedies in special legislative proposals designed to remove some of the difficulties mentioned. Among the objects more particularly aimed at may be instanced: the enforcement of the cultivation of a certain proportion of money crops (e.g. cotton), the binding of labour more closely to the soil, and the better regulation and more effective use of such labour. The power of legislation to bring about these and other improvements in the economic conditions of this extensive agricultural development, appears to me to be over-rated and the dangers of restrictive legislation operating adversely to be insufficiently realised.

312 Most of the causes enumerated earlier have probably exerted a

* A misharu is reckoned = 2,500 sq. metres.

TABLE VI. PUMP DEVELOPMENT OF THE RIVERAIN TRACTS, 1921-9

NUMBERS AND AGGREGATE HORSE-POWER OF PUMPS EXISTING

Liwa	1921 No.	1921 H.P.	1922 No.	1922 H.P.	1923 No.	1923 H.P.	1924 No.	1924 H.P.	1925 No.	1925 H.P.	1926 No.	1926 H.P.	1927 No.	1927 H.P.	1928 No.	1928 H.P.	1929 No.	1929 H.P.
Mosul	(1)		(1)		(1)		(1)		(2)		(4)		(6)		9*		13*	
Kirkuk									(1)		(2)		(3)		4*		5*	
Diyala			3	41	4	48	8	102	17	338	33	683	37	1,009	54	1,427	55	1,445
Baghdad	103		111		102		107		195		(380)		(490)		856*		1,022*	
Dulaim	1		2	25	2	25	4	69	6	119	9	200	16	371	41	1,080	90	2,633
Karbala	1		1		1		1		1		1		1		2		3	
Hilla	(1)		(2)		(3)		(4)		(6)		(12)		(18)		24*		34*	
Kut			2	15	6	51	14	136	37	364	33	140	73	1,512	166	3,508	290	10,904
Diwaniya	6	52	12	160	16*	239	34	669	97	2,206	143	3,434	177	4,605	216	6,044	243	7,165
Muntafiq									4	46	4	46	15	406	20	636	34	1,268
Amara	30	337	35	403	44	504	48	567	51	609	54	664	56	741	90	2,113	139	4,256
Total number of pumps	143		169		179		221		407		675		892		1,481		2,031	
Average horse-power returned‡		10·8		11·9		12·0		14·2		18·4		16·8		23·0		25·2		29·1
Approx. total area served in square kilometres†	190		250		270		390		940		1,580		2,560		4,670		7,320	

* Figures supplied by the Irrigation Department. All other figures supplied by Liwas.
Figures in brackets are guesses founded on such information as was available.
Where not given, the horse-power figures were not returned or are too doubtful to use.

† The approximate areas served are based on an allowance of 80 miskaras (0·126 sq. km.) per horse-power.

‡ The Irrigation records indicate that the average horse-power of all the pumps installed is somewhat lower than that of those returned here, e.g. 24 in 1926 and 26·8 in 1929. This would reduce the areas served in these years to 4,450 and 5,450 sq. km., on the basis given. The Department's 1930 figures show an increase in average horse-power to 29·1, a reduction of about 100 pump installations in the Baghdad liwa and of about 30 in the whole country. The principal increases are in the Amara and Kut liwas.

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312 seriously, many a decisively injurious effect on the success of pump development as a whole. These difficulties all call for careful study and for steady and carefully considered ameliorative measures. They are, however, for the most part outside of the scope of this report. But underlying and aggravating all other difficulties there is a widely prevailing uncertainty of rights to hold and to exploit the land affected. This has in many cases poisoned the relations between the two classes mainly interested in the majority of these enterprises and reduced to a minimum the prospects of their successful co-operation. And it has nearly always left the rights and the obligations of those concerned injuriously indefinite towards both the Government and to those associated with them. Consequently the bulk of these pump-fed areas have never received the single-minded and unified agricultural management that was, and is, an essential condition of success. It is possible, perhaps likely, that the other adverse conditions recited would in any case have prevented the general and widespread success anticipated. But a number of instances have been given me of pump ventures that have proved profitable in spite of these handicaps, because unified management was, for one reason or another, possible and realised.

427 Be this as it may, it is indisputable that the prospects of general success would have been increased if in all cases the rights to the land
311 affected had been authoritatively settled and the requisite unification of agricultural control had been secured, before capital and energy had been so lavishly expended on these ventures. It was most unfortunate that this remarkable agricultural development should have coincided with the singularly unstable economic period that has followed the war. But it can also be recognised now, in the light of experience, that the rush to develop these riverain tracts was carried out without sufficient preparation and foresight, and at a rate and to an extent which made too drastic demands upon the adaptability and the numbers of the primitive agricultural population upon whose efforts success ultimately depended.

311 The riverain tracts, which are primarily affected, are among the
312 most valuable agricultural areas in the country, because (*a*) of their contiguity to the main waterways and roadways, (*b*) of the natural fertility of the alluvium deposited along the river ridges which contain them, and (*c*) of their relatively high levels, which facilitate drainage and minimise the dangers of high floods. But owing to the last quality any regular cultivation of these tracts necessitates the installation of some artificial means of lifting the water from the adjacent waterway on to the land.

312 Prior to the recent pump development such artificial means of water lifting were virtually confined to the local water wheel (kerid) or to other simple devices, operated by animal or man power. Where kerid cultivation exists to-day it seems not infrequently to be more efficient than pump cultivation, since the more laboriously acquired water tends to be more carefully used and the land to be more carefully tilled to receive it. So it may be accepted that where cultivation by kerid or other simple lifting devices existed previously, such cultivation was usually good of its kind.

311 It therefore appears that until recent years cultivation in these valuable tracts was restricted to certain fringes watered by the simple types of lift mentioned, supplemented by rain in good years, and by flood water, through flood channels, when and where conditions per-
[414] mitted. And since land was comparatively plentiful and cultivators comparatively scarce, the parcels of land actually cultivated varied incessantly to meet soil impoverishment, flood devastations, river

changes, canal silting, tribal movements, Central Government action, or other circumstances. 311

7. With relatively little exception the riverain tracts affected are miri land. It has been noted how the cultivation previously shifted therein in response to changing circumstances. The prescriptive claims to pasture were naturally even more variable and indeterminate. It is consequently not surprising that as the pump development movement extended, these riverain tracts were found so closely interpenetrated by prescriptive claims (lazma) of one sort or another, that few areas suitable for pump development were unaffected. These claims constituted a serious obstacle to the general development of the riverain tracts by pump installations. For at first the claimants as a whole had neither the desire, nor the enterprise, nor the ability to raise the capital needed to undertake this development themselves. 311 423 427 312

In discussing these prescriptive claims earlier their primarily tribal origin was mentioned: and it appears that the prescriptive rights recognised by the provincial authorities in pump agreements are preponderantly of such origin and character. These pump agreements may be made in the name of a sheikh or sirkal, but he stands as the tribal or sub-tribal, representative. No doubt when the sheikh or sirkal is a forcible person, he may engulf in his own person the rights of his tribal associates. Alternatively when the sheikh or sirkal is a man of straw, unable to lead his section or keep it together, he may be displaced, and even lose his strictly tribal share in the common holding. In a number of cases, after the movement started and its potentialities had become more apparent, a sheikh or other leading member of a tribal section which claimed prescriptive rights over a promising area, himself erected a pump and cultivated the area with the labour of the other members of the section. Under these circumstances the difficulties of divided interests and divided control, so frequently attending these pump ventures, may not arise. And so far as my information goes it is pump ventures inaugurated and worked by a capable tribal leader under these conditions that promise to be the most successful. 427 312 622

But enterprising townsmen and others with tribal affiliations, who wished to participate in the movement usually had to search for a suitable stretch of miri land and enter into an agreement with some group of claimants to prescriptive rights over it. No very definite procedure was required. The process may be loosely generalised somewhat as follows. An enterprising individual, having some miri land of uncertain limits and subject to uncertain prescriptive claims in mind, decided to buy a pump and engine, the capacity of which usually depended as much on his financial resources as the situation and extent of the land to be watered. He applied to the Governor of the Province for permission to erect the installation. This always necessitated a permit from the Irrigation Department (under the Irrigation and Embankments Law), and when the land was miri (as it usually was) the approval of the State Domains Department and the issue of a lease by them. 427 312 311

The Irrigation Department checked the suitability of the installation to the extent of land, according to the information given; and if they had the means tried to locate the land and check the area on a map. Otherwise the figures had to be accepted as notified. And even when the capacity of the installation and the area of the land (as quoted) were discrepant, it was often found that the pump had already been bought. The Department also tried to ensure that the site of the pumping plant was wisely chosen in regard to flood and low stage river conditions, as well as the distribution of the water for cultivation.

The State Domains Department acted through the provincial authorities, who necessarily had no better information as to the situation

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and extent of the land affected than could be furnished to, or provided by, the Irrigation Department.

But probably the two most unsatisfactory features of the proceedings were (i) the failure to settle the rights of prescriptive claimants definitely before allowing agreements to be made with them as *de facto* landholders, and (ii) the loose and unsatisfactory agreements, commonly entered into, between these claimants and the pump owners.

It is apparent now that it would have saved time, money and a great deal of trouble in the long run to have investigated and settled all prescriptive claims at the outset. It was reasonable and equitable that prescriptive claims based on effective exploitation of the soil should be recognised. But such recognition should have been coupled with an equally definite limitation of the claimants' rights to these specifically recognised areas. It was clearly unreasonable and contrary to the public interest that, in addition to such properly recognisable rights, a vague mass of indefinite and shifting claims should be allowed to persist and to interfere with the economic development of these tracts as a whole. It was desirable when the opportunity occurred to define alike the rights of prescriptive holders and the balance of unincumbered miri land free for exploitation by other parties under lease or grant from the State. And since the object of pump development was a much greater extension of cultivation it was evident that the necessarily restricted limits of previously existing cultivation would tend to be obliterated thereby. Consequently, if prescriptive claims were to be recognised on the only clear and equitable basis possible—that of effective exploitation of the land—it was important to investigate and record the existing limits of such exploitation before these limits were effaced.

If this had been more evident at the time, such claimants could no doubt have been justly accorded considerably smaller areas than are now claimed, while the Government would have secured a balance of free miri land irrigable by pump which might have been leased directly to those desirous of erecting pumps. No doubt in these circumstances the areas available for lease to pump owners would often have been awkwardly interspersed with the recognised prescriptive holdings; but this was unavoidable unless such claims had been repudiated. And if both parties had known exactly where they were at the outset, agreements between them could have been entered into on a much more satisfactory basis than was as a rule actually possible.

As it is the peculiar difficulties that have arisen in the tenure of these riverain holdings have been primarily occasioned by the uncertainty of the respective rights of pump owner and prescriptive holder, when these are different parties. When they are united in one person, or in a tribal or other group that displays effective cohesion, current difficulties for the most part resolve into those commonly attaching to the holding of miri land elsewhere. It is true that certain obligations are due to the situation of these holdings in proximity to the main waterways (e.g. the maintenance of flood protection) but these can be separately considered and were neither new nor unexpected.

So the problem of the riverain holdings in which pump development has taken place may be regarded essentially as a particular case of the general problem of the tenure of miri land. But this merely makes at least a provisional solution of this larger question the more imperative. And any such solution, when applied to the pump areas, must also provide for the definition and reconciliation of the respective rights of pump owners and prescriptive holders, when separate parties in a joint undertaking.

2: Dowson G-5 (1929-30) 1932 MH Iraq MH.

PART V.—MEASURES RECOMMENDED.

PRELIMINARY CONSIDERATIONS,

LAND REGISTER AND LAND SURVEY

1–5. Preliminary Considerations

1. The growth and maintenance of agricultural prosperity will primarily depend upon the intensification and multiplication of well-directed individual effort and enterprise on the part of the numerous body of persons, large and small, who effectively possess and manage for the time being, the holdings scattered throughout the 90,000 square kilometres of agriculturally productive land in the country. These landholders are the indispensable builders of national prosperity. The legislative and administrative policy of Government should be directed to strengthening, guiding and encouraging them as a body in their struggle on their innumerable estates and holdings to erect the fabric of a stable and progressive agricultural economy. And such an economy can only be established on the foundation of a stable land tenure. 000

No man engaged in the management and cultivation of a landholding, large or small, can be expected to sink his capital in the land and devote his energies unreservedly to its development, if he is uncertain whether he and his heirs will benefit by his husbandry. And the evils of such insecurity are aggravated if taxation of the land is uncertain, may be heavy and is variably assessed. When the development and cultivation of a holding is beyond the unaided powers of the landholder and his family (or is a group interest of any sort) it is no less essential to have unity of control coupled with willing and effective collaboration. In other words, conflicting rights and interests in the land must be reconciled wherever they occur, and adequate remuneration and satisfactory working conditions for agricultural capital, management and labour all be forthcoming.

The injurious effect of the existing welter of uncertainty and dispute upon both the agricultural prosperity of the country and public order, can hardly be exaggerated. Everyone directly or indirectly concerned with agriculture in el 'Iraq must know many individual cases in which the development and use of the land has been gravely obstructed by the widespread insecurity and confusion of rights. Indeed the most diligent enquiry would be unlikely to reveal anywhere any appreciable number of holdings, large or small, held in undisputed possession and free from hampering and conflicting claims. It needs no great effort of the imagination to appreciate the blighting effect of these unhappy conditions prevailing throughout the country, upon the prosperity of the main national industry and the welfare and contentment of the people as a whole. And since the cultivation of the soil and the grazing of flocks comprises the livelihood and well-being of the vast majority of the population, the greater part of the time of officers of the provincial administration is taken up with attempts to regulate spasmodically and 423 427

423 ephemerally the unceasing stream of disputes concerning or arising out
427 of the possession and use of land.

The confusion of land tenure throughout the country generally is not confined to one category of land. While it may be more general in the case of miri land, it is also common in the case of tapu land. The long-standing and bitter disputes in the Muntafiq area regarding land claimed to be held by tapu sanad are the most notorious, but far from the only, illustration of this. Similar uncertainties are common throughout the country, in regard to land claimed in tapu tenure, to land and trees claimed to be mulk possessions, and to land dedicated, or claimed to have been dedicated, under the various forms of waqf.

185 The execution of an effective reform of land tenure throughout el 'Iraq is a formidable undertaking and one which under the most favourable conditions is bound to take a great many years to complete. It is easy enough to draft bills designed to bring about academic reforms and to get these passed into law: but it is a very difficult matter to ensure that such enactments are beneficial and workable in sober practice and even more difficult to ensure their steady, intelligent and impartial application over the long term of years that must intervene between the introduction and the accomplishment throughout the whole country of the thorough-going reforms that are needed. But serious as the difficulties to be encountered are, they will yield, as they have done elsewhere, to intelligent, sincere and persevering attack.

185 2. The late State Domains Department warmly espoused and stead-
423 fastly advocated the implementation of the original attempt of the Ottoman administration to grant out all cultivated miri land on tapu tenure. This policy was loosely and, I venture to think, misleadingly termed the alienation of miri land. For alienation denotes an estrangement of legal ownership whereas such ownership (el raqaba) is specifically reserved to the State under tapu tenure. The correction has more than legal significance; because the expression "alienation of State land" connoted, both to the Department itself and to the public, the adoption of a new, a beneficial, and a feasible policy of distributing land hitherto held by the State to private, and for the most part to peasant, proprietors. Tapu tenure, as already noted, was expressly intended in the country of its origin to promote a body of industrious peasant proprietors and taxpayers.

423 In sober fact the overwhelming majority of the cultivated holdings,
427 classified as miri in el 'Iraq, has for generations been in the hands of the people. Its possession is sufficiently subject to local or central interference to cause great individual insecurity of tenure, and all the evils resulting therefrom, as we have noticed. But while the legal ownership of the State is indisputable, its exercise of such ownership is, for the most part ineffective, uncertain and spasmodic. This is inevitable under existing conditions and is bound to remain so until they have been remedied.

The reform attempted by the Turks, and advocated again by the State Domains Department, was not, therefore, in any real sense, a substitution of private for public ownership of land. It was essentially no more than the legal regularisation in a prescribed form of the already widely existing private or communal holding of miri land. Some such reconciliation of actual with lawful tenure of miri land is indispensable if general security of tenure is to be established at all: and the greatest sympathy must be felt with the desire to effect this reconciliation through the medium of an established statutory tenure.

But the failure of the Ottoman Government to apply tapu tenure, either generally or effectively, alone constitutes a weighty warning against the adoption of this course. For there is no doubt about the earnestness or the persistence of the Turkish efforts, and nothing to show that el 'Iraq is better situated or equipped to succeed to-day. It has already been noted that even where tapu tenure is nominally in force at present in the country, neither its rights nor its obligations are secured; while the limits to which it purports to apply are rarely known. To a lesser extent the same is true of mulk. 423 427

Again, admirable as the underlying principles of tapu tenure for the most part are, the greater part of el 'Iraq is not yet ripe for the complete freedom of individual dealing with and mortgaging land that it confers. So long as tribal and other communal divisions remain strong, unrestricted individual freedom to dispose of land would be dangerous to public peace and contentment. And, until the great mass of smaller holders have gained much greater economic stability and experience than at present they possess, any general freedom to mortgage holdings would merely be an incitement to the piling up of unproductive debt. Moreover, a thorough and carefully considered review of the future needs of the country in the way of public works, of areas to be utilised as extensive pasture, or developed as forests, fisheries, etc., of territories to be otherwise specially ear-marked for communal or other reasons, should precede any appreciable extension of tapu tenure.

3. If the general introduction of tapu tenure of cultivated miri land must, on sober consideration, be dismissed as neither practicable nor desirable under present conditions, what is the alternative? In the first place, no single stereotyped tenure is applicable throughout the whole country or probably ever will be.

Thus, since a considerable part of the country is recognised as lawfully, if loosely and indefinitely, held in tapu tenure already, that tenure can no more be abrogated forthwith than it can be generally extended. Any comprehensive reform of land tenure in the country must include a rigid scrutiny of all existing claims to tapu tenure, the precise definition of the areas affected, and a thorough revision and clarification of the provisions of that tenure to make it workable and consequently recordable. But fresh grants in tapu tenure should be prohibited or very severely restricted, until this had been done.

Again, specific undertakings have been given by successive Governments in respect of the conversion of miri groves and gardens into either tapu or mulk tenure. Owing to the inexactness of the terminology commonly employed, the undertakings have been interpreted in both senses. These undertakings must clearly be honoured in one way or the other. But if the Government's promises permit, it would at least be advisable to restrict mulk proprietorship to the physical limits of well-established groves and gardens. In any case, here again, a systematic investigation of claims, definition of areas and formulation of clearer and more practicable conditions are needed. The areas affected are scattered all over the country.

Yet again, it has been foreshadowed that parcels of miri land—at least within the municipal limits of the more important towns—occupied by buildings which are classed as of a permanent character, shall be regularly recognised as mulk. And there are many other demands of urban tenure requiring attention, which cannot be entered into here.

There also exist numerous stretches of miri land already utilised

423 for public purposes (e.g. as public waterways, railways, roads) which
427 should be formally reserved forthwith as public utility areas.

It thus appears, on a most cursory examination, that there is a large, a pressing, and a complicated programme of practical reform waiting to be done in the existing legal categories of mulk, tapu and matruka (or manafa' umumiya) land alone. The complementary task of establishing the overwhelming balance of miri land on a securer and economically sounder basis is even more formidable. This balance, it will be remembered, includes the riverain tracts, the settlement of whose complex problems is probably the most imperative agrarian question of all.

185 The conclusion is inevitable that if any effective reform of existing land tenure is to be established at all throughout the country as a whole within the life-time of the present generation, it must be initiated and maintained on the simplest lines that will satisfy the bare essentials of equitable settlement of existing claims, of substantial security of subsequent tenure, and of even and economical taxation. Simplification of the land law and of the practical working of all tenures; simplification of the procedure of cadastral survey, of settlement and record of rights; simplification of fiscal assessment and collection, must be given the utmost possible consideration throughout.

4. It will be easier to see what simplifications of tapu tenure are desirable and justly possible when the existing provisions of that tenure have been analysed as applied or applicable in el 'Iraq to-day (see vii, 1). But from the point of view of the national interest the necessity of securing a fair and proper valuation of tapu acquisition payments (e.g. tapu mithl or bedl mithl) on all initial grants in this tenure is probably the most important. The enormous territories of miri land now existing constitute the principal capital of the nation and any transfer of rights over such land to individuals should be accompanied by equivalent advantages to the public purse. Timely provision against excessive shareholding, and for the nomination of authorised representatives when there are more than two or three shareholders, should also not be overlooked.

But since the vast majority of the cultivated land in el 'Iraq is miri, the necessity for the general simplification just emphasised applies with greatest force to this category of land. In general the simplest, the quickest and probably the only feasible method of placing the tenure of miri land on to a more satisfactory basis, is to accept to the utmost possible extent the present simple concepts and practices and to concentrate upon making their application more systematic, more equitable and more sure. It is evident that for many years to come at least, the tenure of the great mass of miri land throughout the country must be regulated locally, if it is to be governed by law at all. It is always possible for the central Government to intervene in particular cases here and there: but in the overwhelming majority of cases the questions that arise from day to day must continue to be decided on the spot by the people among themselves, or by the authority of a local public officer (e.g. mudir el nahiya) who is familiar with both the people and the land concerned. Consequently any tenure that is to be operative in practice must be understood by, and commend itself to, the judgment of the mass of actual landholders, social leaders and provincial authorities. Simple principles and simple procedure thus understood and accepted can be made to provide the foundation for an attainable reform which, modest though it may be, is preferable to the pursuit of more theoretically perfect tenures, which will inevitably sleep in the statute books because neither people, nor effective authority, nor conditions are ripe for their application. But desirable as it is to put the land tenure as rapidly as

possible on to a firm and complete basis of law and of fuller economic freedom everywhere, it has to be recognised that the process must be gradual, particularly in the remoter and more backward parts of the country. 185

Some measure of discretionary control will require to be exercised in regard to the persons accepted as lawful holders of miri land, for two reasons. In the first place, so long as there are tribal areas (dira) which must continue to be recognised, it may be necessary to restrict the holding of miri land within those areas to members of the tribal group concerned. In the second place holdings of miri land are not transmissible on death, and this would be inconsistent with that tenure as outlined. So that on the death of a miri holder a suitable successor has to be agreed upon. As we have seen the claims of the deceased holder's family to such succession are commonly admitted by prevailing custom. This is unquestionably in the public interest, provided the recognised representatives of the family are willing and able to discharge their obligations as miri holders to the community and the State. But it is necessary for the secure and economical working of miri, as of tapu tenure, that the number of representatives of a group of holders of a parcel of miri land shall be limited. In my provisional report I suggested that the number should not exceed three. In the case of holdings below a certain size (e.g. 10 misharas) limitation to a single recognised representative or holder might be advisable. 423 185 428

Such recognised representatives or holders should be in actual control of the land on the spot and thus effectively responsible for its cultivation and management. He or they should preferably be chosen by the deceased holder's family (or the group concerned) with the assistance, if necessary, of the local authority. Commonly he or they would have taken a leading part in the cultivation and management of the holding previously. The responsibility of a recognised holder of miri land to his family must primarily be a matter between himself and that family, as it is now. Complaints of abuse could always, also as now, be brought before the local authority, and possibly in future in certain cases before the qadi. Again, when the size and productivity of a miri holding permits it could, if desired, be divided on the death of a previous holder. No mortgage direct or indirect of miri land is reconcilable with the tenure as outlined, nor (for reasons given above) does this appear to me desirable (v, 2). Possibly some restriction should also be exercised over the pledging of produce and of agricultural animals and implements. 423 185

In the interests of the nation and the agricultural community as a whole, it is essential to recognise in a practical way, from the first, the economic limitation set on both the fragmentation of holdings and the multiplication of shareholding. The capacity of a parcel of land to provide a livelihood is necessarily restricted, and those who actually develop and work on it, with their immediate households, must evidently have the first call on its production. Moreover, unless there is a surplus of profit to put back into the land the general advance in the standard of agriculture, which is so greatly needed, will be retarded, if not prevented. Security of tenure is one of the primary conditions of such an advance. But security of tenure must be coupled with a wide-spread and general opportunity to make agriculture provide more than a bare and narrow livelihood for the greater mass of the population engaged in it, if any sustained national advance is to be realised. Owing to the sparsity and mobility of the country's existing population and to the backward state of its agricultural development there should be no difficulty for very many years in preventing any uneconomical congestion of the agricultural community on the land. But excessive shareholding

already occurs in more intensive holdings (e.g. gardens) and in house property.

5. When considering the position in the riverain tracts, in my provisional report I suggested (iii, 24) that the simplest and the most appropriate means of regularising the holding of miri land was by standard leasehold agreements in accordance with prevailing theory and partially prevailing practice. It never appears to be contested, even by the most firmly entrenched holders of miri land, that the ownership of such land belongs to the State. Nor is it contended that this ownership is titular. But while the effective ownership of the State is recognised, it is claimed that this ownership does not carry the right to eviet at will well-established holders from their holdings of miri land. Subject to good behaviour, to maintaining cultivation, to payment to Government of its revenue contribution, and to the satisfactory discharge of certain public duties, such holders of miri land claim a right of undisturbed possession, which in principle is universally admitted.

There will probably be no difficulty in formulating the main rights and obligations of miri holders in standard terms, if and when Government decide to maintain and systematise miri tenure. But within the main framework of this tenure considerable elasticity would have to be allowed for supplementary or even exceptional provisions required to meet varieties of local circumstances, of local customs and of agricultural needs. The rain-watered plains of the north, the valley cultivation of the hills, the pump-fed riverain tracts, the rice-growing fringes of the marshes, the areas supplied with regular free flow irrigation, are instances of such variations which will occur to all.

[651] At first sight the contingent obligations now customarily imposed on miri holders in the form of public duties appear to be impracticably onerous. But the obligation that needs definition most of all is the nature, the method of assessment and the method of payment of the revenue contribution, which represents the miri holder's amalgamated rent and tax to the nation, for the land he holds. General public duties should not fall on miri holders as such. They would more reasonably be discharged by some unpaid local dignitary, who could be accorded appropriate privileges.

In pursuance of the need to establish greater security of tenure and in conformity with customary doctrine, miri leaseholds held by long-established miri holders or their descendants, should normally be renewable in practice, although terminable in form. The duration of miri leaseholds might as a matter of regular routine be fixed at ten years. While such leaseholds should ordinarily be renewable to previous holders, if they had previously discharged their obligations satisfactorily, yet renewal should require a formal act on both sides. This would keep the nature of the tenure in the public mind; and the existing records up to date and reliable. Standard fees should be charged for all issues and renewals of miri leaseholds. These fees should in principle be limited to covering the aggregate cost of the simple administrative and technical procedure needed to maintain the necessary records satisfactorily.

6. The Land Register

423 6. As already noted the Land Code only recognises the private holding of land in two ways. Such a holding must either be private property (mulk) or it must be State property* held in tapu tenure. And [625] the acquisition of all private holdings in either of these categories must be registered to be valid.

* Miri in law including all cultivated land not owned in mulk.

2: Dowson G-5 (1929-30) 1932 MH Iraq MH

be registered to be valid. Thus the Ottoman legislators intended and provided that all holdings of cultivated land should be recorded in the Land Register. The inability of the Ottoman administration to put the land law into force, has left the greater part of the cultivated land of the country in parcels occupied on loose and irregular tenures unrecognised by the Statute law and unrecorded in the present limited Land Register. Instead of comprising, as intended, a record of all cultivated holdings that Register probably excludes from its purview between three-quarters and four-fifths of the cultivated zones. To permit the Land Registry to perform its intended national function and constitute the general and dependable custodian of land tenure that is needed, not only must its administration and procedure be drastically reformed, but the scope of its operations must be steadily extended until they include at least all privately held land of every recognised category. It should in fact become a General Land Registry (Daftarkhana umumiya el arazi) instead of being, as at present, a Department of tapu and mulk registration only. (Dairet el tapu.)

There are three points to which reform must more particularly be directed before the Land Registry can perform its functions. The Land Register is at present a register of transactions or deeds. Registration of deeds is an unreliable and incomplete method of recording rights to land. It should be converted into registration of title. There are also at present two decisive external obstacles to the construction and maintenance of an effective register of title. The first of these is the absence of a dependable cadastral survey. The existing service recognises this need and carries out scattered property surveys itself to the best of its ability: but this is no substitute for a properly controlled survey conducted by the technically competent Department. The second obstacle is the absence of practical provision to make the extreme multiplication and sub-division of shares upon inheritance of mulk property and tapu holdings economically workable. Such extreme shareholding may possibly still be rare, but it occurs*; and it would be fostered by the introduction of an efficient record until the position became unmanageable.

Since the major defects of the existing Land Registry are due for the most part to circumstances outside of the control of the Department itself, no useful purpose will be served by examining its internal procedure in detail now. Nor does space permit here of any explanation of the necessary conversion of the Register into a Register of Title. When the immediate questions of constructive reform have been decided the requisite modifications in the methods and machinery of record that should supplement them can be considered in detail if desired.

7. Land Survey

7. Reference to Part II will recall to mind the position and prospects of the national land survey, which it will be remembered is of a purely topographical nature. So far as can be foreseen it will take about another ten years to complete and map this survey on a scale of 1:10,000 throughout the cultivated area of the country, if the staff and efficiency of the Survey Department are sufficiently strengthened to enable them to push ahead with their general framework and to make good certain other weaknesses while continuing detail survey on the present lines. It may be hoped that Government will be able to afford the Department the necessary financial and administrative support to enable at least this modest forecast to be fulfilled.

* E.g. see "A Report on el 'Iraq," page 33(b), by Ahmed Fahmi Beg, Director-General of Revenue, Government Press, Baghdad, 1926.

2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

423 This forecast could be halved at relatively slight additional expense
647 if a minor expansion of staff of all grades and of resources could be
185 authorised, if land marks could be regularly safeguarded, and if an uninterrupted programme of work could be maintained. This would make a regular and equitable valuation of the Land for purposes of land revenue practicable within a reasonable period (see vi, 9).

But I see no prospect of any general programme of more detailed or larger scale survey being realisable, nor could it be recommended at present.

423 It has already been stressed that the execution of a methodical and
185 trustworthy land survey of the country is a requisite condition of all effective land reform. It is a requisite condition not only of the establishment of a stable and secure land tenure and of an equitable assessment of land revenue, but also of any efficient system of irrigation and indeed of any reliable and systematic knowledge, development and use of the territorial resources of the country. It was, for example, to provide essential information for the Irrigation Department that the Survey has concentrated on work in the Irrigation Zone hitherto. It is, therefore, imperative that while devoting closer and more considered attention to the needs of land tenure in future, the Survey should call no halt in meeting these other primary needs.

Unquestionably a detailed cadastral survey, which reliably locates the limits of all individual holdings, is required to place land tenure and land revenue on to a thoroughly satisfactory basis. Only on the basis of such a survey can the unqualified stability and security of tenure be attained which is required to stimulate the development and productive capacity of the country fully. But the change from pronounced confusion now characteristic of land tenure to detailed order, is too great to be effected at a single step. The requisite detailed cadastral survey would be a lengthy and onerous undertaking for a much richer, better prepared and better equipped country. It should not be attempted in el 'Iraq at present.

[651] Doubtless in the vicinity of the larger towns and in other places, in which the higher value of land brings in commensurate receipts in higher fees or in increased rentals or other revenues to Government, true large scale cadastral surveys may be justified exceptionally. And the ultimate extension of a proper cadastral survey elsewhere, as development proceeds and land values increase, should always be kept in view.

But the hopes of establishing orderly record, secure tenure, and fair and dependable taxation of land throughout the overwhelming mass of the cultivated territories of the country within the next ten or fifteen years, must be based on a foundation of simpler and less detailed survey. To be precise, the measures of attainable land reform within any period worth envisaging at present should be such as are applicable, and can be maintained, in conjunction with a 1:10,000 topographical survey of the cultivated terrain of broadly the same character and accuracy as is now being produced. The work should be converted into (what has been aptly termed elsewhere) a topo-cadastral survey, without markedly increasing the complexity and closeness of the detail. The parcels or sub-divisions of the land adopted as cadastral units for purposes of survey, record and fiscal assessment, must be of considerable size and bounded (at least ordinarily and preponderantly) by easily recognisable physical features. The placing, and still more the subsequent maintenance and control by Government, of a host of artificial boundary beacons outlining individual holdings must be dismissed as entirely impracticable. It will be as much as the country can do to establish and

2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

PLATE V

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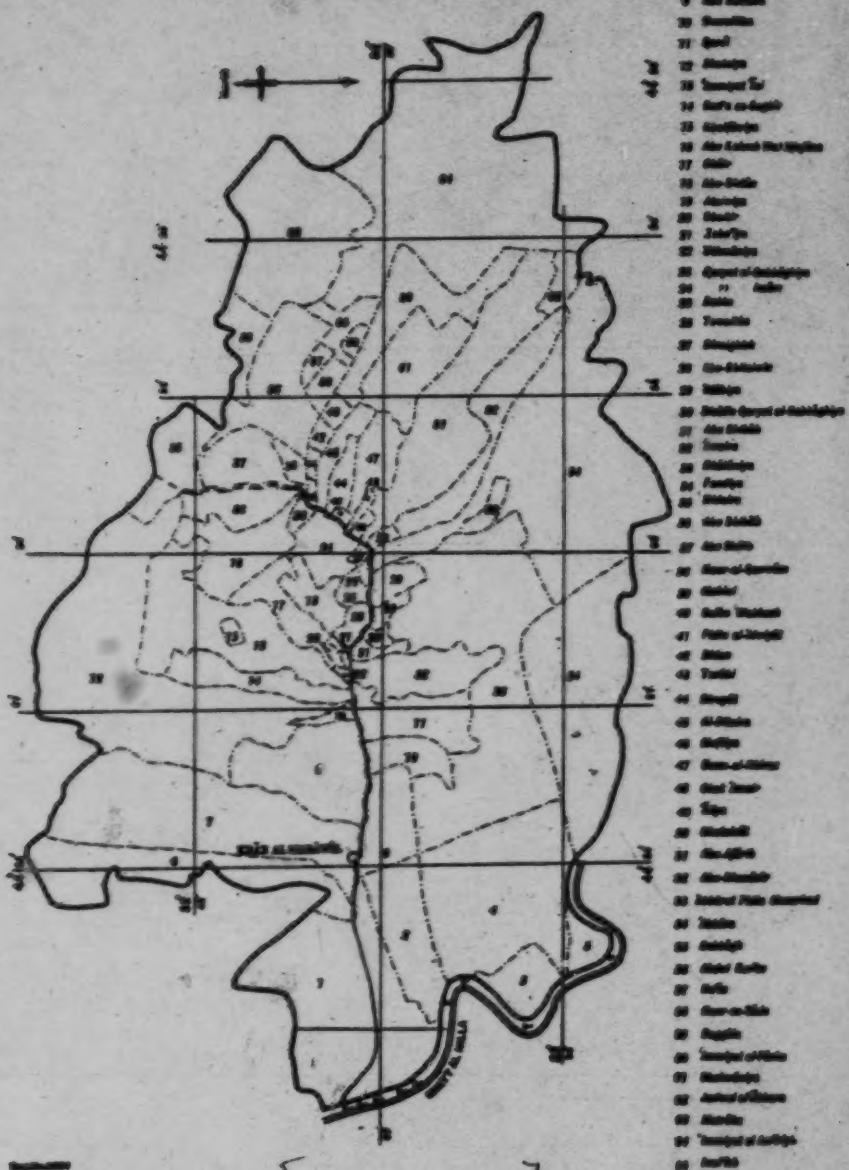
OUTLINE PLAN OF
MAHĀWĪL VILLAGE, HILLA LIWA
ILLUSTRATING SUBDIVISIONS INTO MAQATA'AS



[facing p.41]

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

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protect the framework of survey reference points, which constitutes the one and only indispensable collection of ground marks.

The landed subdivision, cultivation unit, or estate, commonly known as *muqata'a*, which exists in one form or another throughout the greater part of the country, affords an admirable general instance of the type of topo-cadastral unit needed. Plate V shows the actual grouping of land in muqata'as in a village selected at random as well as their considerable variations in size. The term muqata'a itself is usually, if not invariably, applied to large existing agricultural holdings regardless of the method of tenure or the legal category or categories of land included therein. Existing muqata'as should not, of course, be surveyed and accepted as cadastral units without proper scrutiny of their history and tenure, while in some cases they may require subdivision and in others grouping. But subject to necessary investigation and adaptation to the practical requirements of survey and record, they constitute a series of major territorial units of the greatest economical importance agriculturally and the greatest practical importance administratively for the handling and maintenance of land reform. Where muqata'as do not exist, a similar artificial grouping of agricultural land for purposes of survey and record can be substituted. All the more important rights to land can be recorded with respect to some one or other of a series of such major territorial units, not as precisely as if a detailed cadastral survey could be carried out, but with a sufficiently substantial degree of exactness and reliability to provide a solid foundation for the most necessary reforms.

It can, therefore, be concluded that the main objective of survey during the next ten or fifteen years should be the execution of a topo-cadastral survey of the cultivated surface of the country on a scale of 1:10,000 of the existing muqata'as, or of similar artificial territorial groupings of land on the same general lines as at present. In principle this survey should be conducted in association with a preliminary settlement and subsequent record of rights, which will be next considered. And it must be embodied in accurately reproduced published maps, if it is to be of general value and use.

But an extent of territory that would occupy settlement for a number of years has already been mapped on 1:10,000 or some larger scale. So that the survey would be working in advance of settlement for a long time. None the less the co-operation of the Survey staff would be needed on the ground to embody in the maps revisions and additions required during the progress of settlement. The necessary association between the two branches of the work could be secured in this way, although probably not as conveniently or as economically as if the original survey had been done in conjunction with settlement. However, as experience is gained the character of the original survey could be increasingly suited to the later requirements of settlement.

Some reference to surveying from air photographs should be made in view of the discouraging outcome of the work done recently. The difficulties met with appear to have been occasioned by some failure by Government to ensure effective co-operation between the Survey Department and the air work. This should not prevent careful study of the advisability of again utilising air photography under more carefully considered arrangements at least in less accessible areas. The exclusion of all but bold topo-cadastral boundaries should facilitate the use of air photographs in the original survey : but the simplicity of detail, the quality of contouring needed for irrigation purposes and the scale adopted may be expected to continue to make the use of the plane table economical, and of the level necessary, throughout the cultivated terrain. But

2: Dowson G-5 (1929-30) 1932, MH1 Iraq MH1

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recent advances in the use of air photographs have been great, and further advances should be carefully followed by the Survey Department because of the great acceleration in the rate of survey which the utilisation of air photography secures. But while air work can unquestionably be carried out best by a specialist organisation, such work should be done as part and parcel of the national survey and not as an independent operation.

Finally, emphasis should perhaps again be laid on the necessity of basing all methods of detail survey on a mathematically sound and physically adequate framework of reference points. The provision and the maintenance of such a framework is the first and most important requirement of a dependable survey. It is just as dangerous and short-sighted to build up a survey on an unreliable foundation as a house, or to fail to maintain that foundation subsequently.

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

PART VI.—MEASURES RECOMMENDED. SETTLEMENT OF RIGHTS TO LAND AND LAND VALUATION

1-5. Settlement of Rights to Land

1. The injurious uncertainty and insecurity of tenure now so widely prevailing throughout el 'Iraq can only be terminated by a progressive settlement of rights to all individual holdings throughout the length and breadth of the country. This process may be left to the chances of a gradual consolidation over an indefinite future of the results brought about by the interplay of the innumerable social and economic forces operating among the population; or it may be brought about by the conscious statesmanship of Government aiming at the establishment of a sound basis for the development of national prosperity within as short a period as possible. It is such a deliberately planned settlement of rights to land alone that is considered here. Henceforward for brevity the process will frequently be called settlement of rights or simply settlement.

There are two radically different methods by which a settlement of rights may be undertaken throughout a territory. These may be termed respectively Sporadic settlement and Systematic settlement.

Sporadic settlement aims at allowing the work to be carried out piecemeal here and there as the circumstances of the particular settlement require, until it has been completed throughout the territory concerned. Thus any optional settlement must be sporadic, or any settlement which is compulsory on a specified occasion (e.g. when land changes hands).

Systematic settlement is effected methodically parcel by parcel until the work has been completed throughout the territory dealt with. A systematic settlement must be compulsory.

Sporadic settlement is the more attractive at first sight, because it appears to offer the same opportunity of settlement to all landholders in the country or even the possibility of an entirely voluntary operation. It has indeed been warmly advocated in el 'Iraq on the ground that it would be inequitable not to accord the same facilities to all those claiming rights to land. Actually, it is a delusion to suppose that by any method or expedient the same opportunities for settlement can be provided for all landholders everywhere at the same time. This is unquestionably desirable: but it is unfortunately impossible. Under the most favourable conditions any settlement of rights to land is bound to take many years to complete throughout the country. Consequently somehow or another a drastic selection or restriction must be exercised as to the holdings to be settled in any given period. A voluntary settlement would be unworkable. Applications might be made at the outset which would occupy the Settlement staff for years, or they might be so uncertain and irregular as to dislocate the work completely. Moreover, a voluntary settlement might drag on indefinitely everywhere. Again, a settlement effected when any land changed hands, or upon some such specific occasion, would demand staff and resources greatly beyond the country's means.

2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

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A sporadic settlement is sometimes possible in countries in which a great part of the necessary work of defining holdings, tenures and holders has been previously done, or in new countries in which the number of properties to be defined and recorded annually is relatively small. But a sporadic settlement is inevitably more difficult, more protracted and more costly—ordinarily very much more so—simply because it is essentially a settlement conducted in a haphazard and unmethodical manner.

But there are also more concrete obstacles which render any general sporadic settlement of rights to land throughout el 'Iraq impracticable. It would require a numerous and competent staff capable of visiting at short notice over a long period of years an unknown number of holdings indiscriminately scattered throughout the country, and of authoritatively deciding their rightful limits, tenures, holders and many important ancillary details. It would require a Survey Department sufficiently well staffed and equipped, and with its work sufficiently well advanced everywhere, to enable all these scattered holdings to be concurrently mapped and incorporated piecemeal in a national cadastral survey. And it would also require in operation throughout the whole country a General Land Registry capable of recording efficiently the results of each separate settlement as it occurred and of all subsequent changes affecting the land concerned. For unless such changes were regularly recorded the work would rapidly get out of date again and the settlement would never be finished.

Even if it is thought that the first of these three requirements might be satisfied, the second and third unquestionably could not. It is a technically difficult and a prohibitively costly proceeding to build up the cadastral survey of a mosaic of holdings throughout any large territory in a piecemeal way. In el 'Iraq it is impossible to do so, for the basic framework of triangulation on which such a survey must depend is for the most part lacking and will take many years to provide. Moreover, it has been shown already that the execution of a genuine cadastral survey is beyond the capacity of the country, even if it was carried out in an effective and economical manner. A sporadic settlement of rights to land throughout el 'Iraq is also impracticable because no General Land Register exists in which the results could be effectively recorded and subsequently kept up-to-date. Nor could such a General Land Register be readily established, even if the necessary financial provision could be made, as the history of the Tapu Land Register amply demonstrates.

There are further difficulties which need not be entered into. For it should be evident that it is impossible to attack the formidable task of effecting a settlement of rights to land in every part of the country at once. It is very much to be regretted that the long-standing disabilities of landholders cannot be remedied everywhere without delay. But since this is so, it is best to face the fact and at least to make a start at remedying them somewhere. The sporadic settlement of a limited number of parcels selected for some special reason is, of course, feasible, and may even be necessary. Thus the Government appears to be committed to the sporadic settlement of the miri groves and gardens, while the Tapu Department can hardly avoid continuing to seek to reconcile its records with fact whenever occasion demands. And there may be other cases in which public policy may require sporadic operations occasionally and exceptionally. But the main contention that a general sporadic settlement is impracticable holds true none the less, and however unavoidable and even justifiable a limited amount of privileged sporadic settlement may be, it is bound to be costly and to delay the progress of any general settlement out of all proportion to the extent of the territories specially dealt with in this way.

2. A systematic settlement offers the only realisable prospect of establishing any general certainty and security of land tenure throughout the country. Even a systematic settlement would take many years to accomplish. It is evidently more urgently needed in some parts of the country and under some conditions than others. But, gradually and systematically, settlement of rights to hold or use land under any form of legal tenure should be extended over the whole land surface of the country. And concurrently, as such extension proceeds, measures should be taken to prevent the territory that has been dealt with from reverting again to the confusion of rights and uncertainty of tenure now commonly prevailing. For although a complete survey and settlement would be most beneficial irrespective of subsequent measures, since an immense obstacle to progress would be removed by merely clearing up existing uncertainties and providing a sure starting point for title even for the next few generations alone; yet the full benefits of a settlement will evidently be thrown away if the stability and security of tenure gained thereby are not subsequently maintained.

The record (or General Land Register) of all holdings and their lawful holders that is needed for this purpose has been mentioned earlier (v, 6). It can be progressively compiled as survey and settlement are carried through the country. This is a very different thing to endeavouring to introduce it everywhere at once. As the compilation extends it can be kept up-to-date in conjunction with the survey by quite simple routine measures, provided the land law and current practice have been reconciled. Settlement should be undertaken, and the General Land Register arranged, geographically and follow the administrative divisions of the country—nahiya, qadha, liwa. When the boundaries of these divisions are doubtful they should be decided before or during settlement and survey. The necessity of adopting large territorial units of the muqata'a type as the main unit of survey and record has already been explained. It will be among the earliest, and not the least important, functions of settlement to subdivide each nahiya into these requisite units. Although existing muqata'as would naturally be adopted as such units when of suitable size and satisfactorily defined physically, yet these units need not in principle be units of property. Indeed, if they are to facilitate simplified operations as intended, they must frequently include a number of smaller parcels of property on the one hand, or they may represent portions of larger properties on the other. They should in short, primarily be chosen as convenient permanent subdivisions of the nahiya for the purposes mentioned, and be carefully distinguished as such from the units of property with whose boundaries they may coincide. To differentiate clearly between the two these units of survey, record and assessment, should be given a distinctive name. For convenience in this report they are provisionally termed Sections of the Nahiya (aqsam el nahiya), or more briefly referred to simply as sections.

3. When a settlement of rights has to be conducted under conditions similar to those in el 'Iraq—particularly in the general absence of a previous survey and reliable records—it must be conducted parcel by parcel in the field in the presence of the rival claimants, landholders and tenants, of their neighbours, and of the members of the local community generally. Only in the local setting can the Settlement Authority (whoever he be) get to understand the many-sided local problems on which he will be called upon to adjudicate. And only in that setting will he be able to obtain and weigh properly all the available evidence. A peasant who becomes befogged or lies in a Court-house or Government office will do so less readily when in local surroundings and in the presence of his neighbours who live on the land affected. His errors will also be more evident and be more easily rectified. Indeed,

185 deficiencies in the information presented and mistakes of all sorts, which might escape detection elsewhere, are often obvious on the spot. Moreover, it is impossible to transport to a distance (or even to discover in advance) all the local inhabitants who have knowledge of the past history of the land, any one of whom may supply important information at any stage of an inquiry conducted in the locality. Only in this manner can a settlement of rights be secured which will be understood and considered equitable by the general body of the agricultural community and thereby give them the confidence and the stimulus needed to get the best out of the land.

Provision must, of course, be made to ensure the attendance of all witnesses and the submission of all documents, whose evidence may prove useful in investigating the rights to any parcel of land. But special knowledge and care should be exercised before admitting the validity of documents, particularly if torn, dirty and hoary, or if uncorroborated by independent records, or if in conflict with the consistent evidence of accredited local witnesses. The fabrication of specious documentary evidence presents no great difficulty and is the obvious expedient of an unscrupulous claimant. But a little practical knowledge of the composition of inks and papers and of the forger's customary tricks will enable spurious documents to be fairly readily detected, while in more difficult cases recourse should be had to suitable chemical and physical tests in a scientific laboratory.

Whatever justification there may be elsewhere for composite bodies and elaborate procedure in the conduct of an initial settlement of rights, it has already been shown that the possibilities of any effective reform in el 'Iraq entirely depend upon the use of the simplest methods and procedure possible. Anything of the character of Settlement Commissions, consisting of three or more members, would be far too costly and slow to be practicable. Nor are there available in the judiciary anything like the number of judges with the necessary standing and knowledge of the Land Law and the land, who could be spared from the bench to sit on such Commissions. Nor even if such judges were available would it be either economical or advantageous to employ them in this manner. It can be said with confidence that if settlement is conducted in the field on the general lines recommended there should be no serious dispute or uncertainty in regard to the rightful holders of 80 to 90 per cent. of the holdings. And only a proportion of the remainder are likely to present problems of a nature to call for high judicial consideration. Such consideration will be needed in a small proportion of cases and it should be devoted to them alone, after all possible preliminary elucidation of facts has been carried out in the field by the routine processes of settlement. The cases that require high judicial consideration are unlikely to exceed 5 per cent. of the total at the outside, if the previous work has been properly done. Indeed, they should fall considerably below this figure. But even consideration of 1 or 2 per cent. of the total cases presented to the Settlement Authorities in the field might constitute a heavy additional demand upon the regular judiciary if settlement proceeded at all vigorously.

The best course would be to establish a special Land Court to operate in conjunction with settlement and to hear appeals from, or cases referred to it by, the settlement authorities. Careful provision would have to be made to limit these cases to the minimum strictly justified and necessary. Such a special Land Court would soon acquire unrivalled experience of the operation of the land law and accumulate a mass of valuable precedents. It would be able to deal with the cases submitted to it more rapidly and consistently and with much greater insight than the ordinary courts. The jurisdiction of this Land Court

2: Dowson G-5 (1929-30) 1932 MHI Iraq MHI

might embrace all land cases, whether arising from the settlement or not: but if any considered programme of settlement is undertaken, probably more than one Land Court would be required. 185

4. The conduct of settlement operations in the field will be carried out more rapidly, more economically and more effectively by suitable individual executive officers than by Commissions of any sort or by officers with preponderantly judicial experience and training. Executive officers entrusted with the conduct of settlement operations (henceforward called Settlement Officers) should be very carefully selected for qualities of independence, integrity, judgment and experience of the people and the land, as well as for administrative capacity. And they must be capable of conducting simple cases in a judicial manner and exercising simple judicial powers with competence and dignity. For there are bound to be a number of marginal cases on which a minor dispute arises which requires investigation in a judicial manner, but which can most appropriately and economically be dealt with by the Settlement Officer acting in a judicial capacity on the spot.

The regular reference of such minor disputes to the suggested Land Court (or other competent Court) would make settlement impracticable by imposing innumerable delays on its progress and greatly increasing its cost. Such reference would also greatly augment the volume of formal court work. Nor is any gain in justice or efficiency to be expected thereby. A competent officer on the spot is in a much better position to decide the majority of such disputes equitably than a distant court. He will certainly do so more speedily and economically. The majority of more difficult and more doubtful cases alone should be referred to the regular court designated, whose proceedings will gain in value from being able to devote attention exclusively to them.

It is well known that experienced and capable Iraqi officials are at present far too few for the multifarious needs of the country. This is sufficiently evidenced by the enactment of the recent Discipline Law and the proceedings taken under it. Every first class Iraqi will be needed for some time ahead in the regular grades and for the regular work of Government. Settlement of rights is a temporary need apart from the current administration, and Government could not do better than entrust its conduct to some of the present Administrative Inspectors, who are being released from their current duties. It would be impossible to find anywhere a body of officers better fitted to discharge these onerous and responsible functions. They have served the Government of el 'Iraq devotedly for a number of years. They are familiar with the working of the various public services and have long been accustomed to collaborate with them. They have, for the most part, long since shown their knowledge of, and their interest in, the land problems with which they would be required to deal. They are familiar with the fundamental provisions of the current Ottoman Land Code, with post-war legislation affecting land and with the customary practices of the country. They have already had considerable judicial experience as magistrates. They know the country and the language of the people. They know, and are known by, all leading Iraqis. They understand and sympathise with the difficulties of landholders and cultivators, and they would spare no pains to help them. 647 185

5. It would occupy too much space to outline the procedure of settlement in any detail here. Nor will it serve any useful purpose to do so, until the Government have reached a decision on their general policy. But certain broad features of the work may perhaps be usefully indicated. 185

Each Settlement Officer should be entirely responsible for the conduct of settlement operations within a specified Settlement Area and be given the necessary judicial powers for the purpose, subject to such

2: Dowson G-5 (1929-30)1932 MH1 Iraq MH1

ERRATUM

p. 49, line 28 (second new paragraph), "reorganise" should be "recognise"

[FACING P. 48]

185 provisions for reference and appeal to the suggested Land Court or other Court of Law as may be judged proper.

Work should be taken up nahiya by nahiya in collaboration with the local authorities and with the Survey. Every effort should be made to arrange proceedings so that the survey and settlement staff work independently, and thus are not delayed by each other. This should present exceptionally little difficulty in view of the large units to which it is suggested survey operations should be principally confined. Collaboration will be needed in the selection and definition of these units (Sections of Nahiyas) in the first place: but the survey staff will probably be able to undertake this part of the work with the assistance of the local officer (Mudir) in most cases, as soon as they have gained a little experience.

While the work is new to the people and while the procedure is being initially tested, it would be advisable for Settlement Officers to investigate all cases throughout themselves; but as soon as possible all preliminary investigations should be entrusted to Assistant Settlement Officers drawn from the junior ranks of the provincial administration. The speed, and consequently the economy, of the settlement could be greatly increased by this means. The permanent value of the work, as well as its future prospects, would depend very much on the quality of these Assistant Settlement Officers. As time passes and local difficulties are surmounted the operations of settlement could be increasingly undertaken by them. They should consequently be carefully chosen and the importance of their work be publicly recognised. Officers with the requisite qualities and experience should be specially selected in consultation with the Settlement Officer concerned. It would be a valuable recognition of their status if they could be given the rank of Qaimmaqam.

While I am clear that the formation of Commissions to conduct settlement operations would be inadvisable, Settlement Officers should be enabled to utilise the services of men of standing and experience in the country as Assessors in difficult cases when this is desired by all parties concerned. Care would have to be taken to ensure (i) that no one was nominated Assessor in a case in which he himself was in any way interested, and (ii) that no undue demands should be made on the time of any particular person. Perhaps a panel of suitable persons to act as Assessors in each Settlement Area might be drawn up by the Ministry of the Interior in consultation with the Settlement Officer concerned, from which the actual choice might in each case be made.

Due and sufficient notice should be given to the public before settlement of rights is begun in a nahiya. When begun it should be undertaken section by section in an orderly manner. All claimants to rights to hold or use or benefit from the use of land in a section should present themselves in person or by suitable deputy to the Settlement Officer on the day notified, irrespective of tenure or form of occupation. The settlement should embrace all forms of tenure and in all cases define the tenure recognised. Lawful charges on the land (e.g. mortgages of tapu land) should also be investigated. If different forms of tenure exist within the same section the limits between them should be surveyed. Otherwise, scientific survey should be strictly confined at the outset to the definition of the boundaries of sections. When the area of a section is sub-divided internally into a number of separate holdings, the record of the limits of these holdings within the section and of their superficial areas must be of a rough and ready nature based on local knowledge and local practice. Since a valuable control will be furnished by the survey limits and surveyed area of each section, the weaknesses of the interior survey and record will not affect other sections. And I am confident that with a little care and patience local men and local means will be found suffi-

ciently adaptable to meet this need with the advice and general collaboration of the Survey. 185

In the process of settlement all claims to hold land on tapu tenure or in mulk, and the limits of land so held, will require to be thoroughly investigated and authoritatively decided in conjunction with other claims; but although such cases will be important when they arise, they will be a small proportion of the whole and they should present fewer difficulties. But it must be appreciated at the outset that here again a wide discrepancy will commonly be found between law and fact. In law mulk is only valid if registered, while the root of title of all lands granted on tapu tenure exists, and exists solely, in the Land Registers of the Government and in the certificates of registration (tapu sanads) issued by the Land Registry Department (Dairet el Tapu) in conformity with those registers. Now the general imperfection of the Land Registers is well known, and it can be anticipated with confidence that titles to hold land in mulk or tapu would suffer very severely if the legal basis for those titles was solely considered and demanded. Ordinarily under the operation of the Land Code hardships arising from such investigations of legal title to tapu tenure would be mitigated by the recognition of haq el qarar (acquisitive prescription of tapu tenure); but since haq el qarar has long been inoperative this safeguard will be unavailable. Similar difficulties will occur in establishing waqf.

Here, as generally, the solution is to reorganise fact and discount fiction. Suitable provisions should be included in any enactment providing for settlement of rights to land, to allow any claims to mulk or tapu or waqf rights to be adjudged on all the evidence of the facts available, and not merely, or necessarily at all, on the basis of the admittedly unreliable, and often unintelligible, existing Land Registers.

As settlement proceeds a schedule embodying the results should be prepared by the Settlement Officer for each section of each nahiya. In this should be set forth all the more important details. Among these may be mentioned:

(i) The total area of the section.

(ii) The uncultivated area included.

(iii) A list of the separate holdings recognised.

(iv) The location and area (cultivable and uncultivable) of such holdings given with such precision as is possible.

(v) The names of the accepted holders, tenants or holders of other rights with a statement of the nature of all such rights.

Separate holdings should be numbered consecutively throughout the section for convenience of reference.

After suitable periods for publicity and amendment resulting therefrom, and also for appeal as previously suggested, this Schedule would become the record of the settlement of rights to land in the section concerned, and would constitute with the Survey map and documents the authority and basis of the new General Land Register required.

6–8. Selection of Settlement Areas

6. Although settlement of rights is gravely needed throughout the whole country it can evidently only be undertaken in a limited number of places at a time, and it must be expected to take a number of years to complete. If work is to proceed it is therefore a matter of some moment to decide the places in which it shall be commenced. The area of practicable and useful choice is restricted to the districts in which detail survey has been carried out or in which the triangulation framework can be completed in time to allow the suggested topo-cadastral survey to be

1 "reorganize" should be "recognize"

2: Dowson G-5 (1929-30) 1932 MH1 Iraq MH1

185 pushed forward in conjunction with settlement operations without delaying the latter. Broadly speaking this means that settlement can be carried out as extensively as men and resources permit in the Irrigation Zone, but must be limited in the Rainfall Zone to the immediate vicinity of Mosul town (see Plates III and IV).

423 185 In this neighbourhood the land is widely held, or claimed, in tapu tenure (see Plate II) and special efforts have been made by the Tapu Department during recent years to clear up uncertainties and define the parcels justly affected. It was primarily on this account that a considerable block of isolated detailed survey has been completed here. Settlement of this block of territory therefore appears preponderantly to involve an investigation and definition of the parcels held in tapu tenure and, so far as such parcels are concerned, to have been in progress for some time. But rights to tapu tenure should be systematically reviewed and if possible rights to miri land concurrently settled, throughout this area by an independent Settlement Officer in collaboration with the Survey at an early date.

In the Irrigation Zone a considerable amount of detailed survey has been completed in every liwa and there is a wide range of territory in various stages of readiness for systematic settlement.

423 185 651 In el Amara, as is well known, the political and administrative conditions have been retained on an almost exclusively tribal basis, the miri lands (of which the liwa is almost exclusively composed) being farmed out to various tribal sheikhs for triennially assessed payments. It is impossible to discuss the details of these methods here; nor is there any need, since the agrarian conditions of no liwa have been investigated and reported on so regularly or so fully, owing to these periodic assessments. Each successive assessment has built on that which preceded it, but has been carried out in greater detail with increasing attention to the smaller men who hold from the leading sheikhs and really manage and work the land. If public security and genuine national consciousness continue to grow these periodic assessments should crystallise steadily into an effective settlement of rights to land. But the conditions under which the work had to be done in the past were extremely difficult, and if this end is to be obtained (and even if the revenue assessments are to be as equitable and reliable as is now reasonable and practicable) the work must be more closely based upon trustworthy detailed survey and rights be investigated more thoroughly than has so far been possible. A reassessment of the Amara estates (muqata'as) was due, and has doubtless been undertaken, this year. And under the agreements in force with the leading sheikhs the prevailing system terminates and is open to review in 1934. The consideration of fuller and more permanent settlement of rights in this district can therefore properly be left over until this termination approaches, or a further reassessment is arranged.

In the Basra liwa, as already observed, an excellent fiscal survey of the date gardens was carried out several years ago. And the principle of a regular Land Tax has long been familiar through the operation of Midhat Pasha's enlightened *jarib* tax.* The tenure of these gardens (mulk or miri) appears to be rarely, if at all, disputed. For the most part the mulk owners are well known, or could readily be determined. 185 Consequently a relatively minor effort would enable titles to be authoritatively reviewed and, when necessary, settled throughout the Basra reach on the basis of the existing survey. The respective responsibilities of garden owners and the State for the maintenance of the tidal [312] creeks off the Shatt el Arab, from which the gardens are largely watered,

* A commutation of the Government crop share on date gardens into a tax assessed by quality and area, carried out in 1871. A jarib=3667 square metres, or 0·96 of an acre.

should also be decided on grounds of common interest and common sense, not by expositions of the law. 185

The management of the miri, or State Domain, date gardens must be mentioned as it has been the subject of controversy for some time and calls for some consistent policy. But interesting and important intrinsically as the points of principle and practice involved are, space does not allow of their consideration here. In its relation to the major problems of the land tenure of the country as a whole, this is a domestic question for the separate consideration of Government in its capacity as one landholder among many. 423

In the Muntafiq liwa, as we have noted, an authoritative settlement of disputes arising out of important and long-standing claims to hold land in tapu tenure was initiated recently under a special law (see iii, 4). But the work appears to be limited to investigations into claims to this tenure alone and thus to fall considerably short of the general settlement of rights to land that is needed throughout the country. If land is declared free of tapu rights it is, I believe, simply recorded as miri without any settlement of the rights of those in occupation of it. Even a successful settlement of tapu rights alone in this, or in any, area is no doubt a valuable contribution to the general introduction of secure land tenure needed: but when all the cost of carrying out investigation of tapu claims is being incurred in a district so honeycombed with them, it would be a great pity to miss the opportunity to effect a thorough and complete settlement. 123 185

And although it was natural, and very possibly desirable, to entrust this particular piece of settlement originally to a Commission, it is permissible to doubt whether the diversion of three important members of the judiciary and two important members of the administration from their normal duties will continue to be justified by any persistent delicacy or difficulty in the investigation of tapu rights in this particular district. The general widespread need of settlement in all parts of the country is commonly admitted. I have represented earlier that the only hope of satisfying this need within the lifetime of the present generation is to adopt the simplest and cheapest procedure and machinery possible everywhere. No doubt the size and composition of the Muntafiq Commission helped to inspire confidence among the disputants with whom it had to deal, but with all its qualities and advantages a Commission of this nature is bound to be costly and deliberate, and unduly to absorb for the benefit of one locality, public service and public funds which can be ill spared from the much wider general national effort that is needed. At a suitable opportunity (of which the Commission itself would be the appropriate judge) the work which they have initiated might be transferred to an organisation of the simpler character that I have recommended for adoption elsewhere, without breach of continuity, authority or efficiency. 123 185 647

In the remaining liwas of the Irrigation Zone there are several canal areas already mentioned (e.g. the Yuseflya canal area) which were settled by the Irrigation Department, when the canals irrigating them were remodelled or constructed. The work that I saw appeared to have been well done and was certainly well recorded. It should not be allowed to fall into confusion. Owing to various chances I did not succeed in visiting the Latifiya estate, which I very much regret, as the lessons to be derived from its methods and experience in the field of agricultural development should be extremely valuable; but in respect of land tenure it can no doubt be regarded as a specially granted and administered canal area.

The Dulaim reach is ripe for settlement because of much good investigatory work already done and recorded; but largely for this very reason, settlement (except possibly in its lower portion) can, I think, 123 185

423/185 be delayed with less disadvantage here than in areas in which the unsolved pump problems cluster more thickly.

185 7. Throughout the Irrigation Zone as a whole it is the riverain tracts watered by pump installations which appear to me to call most insistently for early and authoritative settlement of rights. Economically it is these mechanically watered territories (whose approximate extent is indicated on Plate II and embraces about 10,000 square kilometres) that present the most urgent as well as the most intricate problems. And it is these territories that the most progressive elements in the nation are particularly endeavouring to develop.

It can be recognised now without reproach or fault-finding that the interests alike of the nation as a whole, of the claimants to prescriptive rights, and of members of the public willing to invest money and energy in the development of these riverain tracts, would have been immeasurably better served if all pre-existing rights had been properly investigated and settled, and if the parcels of land affected had been satisfactorily defined and recorded, before pump permits were granted in increased numbers and before agreements with reputed holders of prescriptive rights had been recognised.

The systematic settlement of rights to land throughout these tracts, that I have already recommended, affords a second opportunity of putting matters on to a stable footing; but it need hardly be repeated that the position of prescriptive holders has been appreciably strengthened and the extent of their claims appreciably increased in the interval. When such holders (corporate or individual) have in effect themselves invested money and effort in pump works, etc., this may be accepted without regret, provided their holdings promise to be effectively developed. Where, what may perhaps be briefly called, dual enterprises are in operation, it is impossible to formulate any general conclusions having regard to the great varieties of conditions in the terms of the agreements made and in the personalities concerned. But it can be said with assurance that a definition of existing rights still remains the first step to a clarification of the relative positions of those associated in these dual enterprises and that such clarification is, in its turn, the doorway towards improvement. Whatever mistakes have been made in the past, whether by the Government itself or by the parties concerned, there will be no hesitation in agreeing that it is in the common interest now, wherever and however reasonably possible, either to reconcile or to separate the interests of those unsuccessfully associated in these joint enterprises.

The complication of conflicting claims and rights in these riverain tracts is very great, but the conditions differ so much from one pump area to the next that there is no general decision that can clear up the existing tangle. This can only be done by a patient investigation and settlement parcel by parcel conducted by a competent and impartial officer equipped with the necessary powers. While I do not pretend that such a settlement of rights in these areas would be easy, I am quite confident that it is practicable. And there can be no doubt that it is most necessary both in the interests of the country as a whole and of the particular parties concerned in each case.

The normally convenient section of survey and record throughout these riverain tracts will tend to conform to the limits worked by a pump, or battery of pumps, as a unified agricultural holding. Sections so indicated will probably be fairly stable; but they may frequently require subdivision for fiscal assessment. High ground not commanded by the pump, or not worth cultivating, would be included or constituted part of an adjoining section, as best suited the general requirements of the work.

The first objective of any settlement of rights in the pump areas should therefore be a systematic investigation and detailed settlement of the prescriptive claims admitted as the basis of existing agreements. This is undeniably difficult because the indications of earlier cultivation, in the light of which this settlement might have been previously carried out, have now been submerged by the great extension of cultivation. It has consequently been suggested that the only practicable course is to allow a specific area per adult male cultivator whose right to participate is recognised. This area would naturally vary according to the locality and the general conditions prevailing. Under certain conditions this expedient may be the best, or indeed the only practicable, course; but it savours of a new allotment of land rather than of a recognition of a claim based upon previous use. As a general rule, and wherever possible, it is preferable that the physical recognition of the limits affected by a prescriptive claim, as well as the equitable recognition of the claim itself, should be based upon reasonably attested previous exploitation of the soil. I believe that a painstaking, experienced and impartial officer studying local features and hearing local evidence on the spot, will e[illegible]n now generally be able to arrive at very dependable conclusions regarding both (i) the limits of old effective occupation and use and (ii) the present-day representatives of the previous occupants and users. | 85

It has been mentioned earlier that the prior rights recognised by the provincial authorities as the basis of so many pump agreements were largely of tribal origin and character. During settlement the exact nature of all holdings should be carefully investigated and recorded in a manner that is compatible with their origin and character. This should present no undue difficulty in the cases referred to, if the leasehold form of miri tenure is systematically applied in future. It would probably be sufficient if the lease was made with the accepted head of the tribal section (reis-el-firqa) as such. Or legislative provision might be made to recognise tribal sections as juristic persons represented in each case by a duly appointed head or a small council (lujna), when preferred. In the event of the death of the accepted head, or other representative, of a tribal section a substitute would need to be forthwith nominated. When there was no disagreement, such nomination would no doubt be a matter for the tribal section concerned, but the local authorities should be empowered to make the nomination, after consultation with the members of such a section, when the latter were unable to agree.

8. On a general review it is evident that the prospective field of settlement is very large. But it is unfortunately no less evident that, under existing conditions, any immediate commencement can only be on a very small scale. I suggest for consideration the appointment of three small settlement parties under the charge of three of the present Administrative Inspectors as Settlement Officers. One of these Settlement Officers might take over the work in the Muntafiq if and as circumstances and occasion permit. The development of this work into a general settlement of miri holdings as well should be considered. Such a development is very desirable if it can be reconciled with the primary need to terminate promptly the long-standing disputes regarding tapu tenure in this district. Alternatively the miri areas could be revisited and settled in detail subsequently; but this would necessarily be slower, more costly and probably less satisfactory in the long run.

The selection of the other two areas in which settlement could most advantageously be initiated is inevitably difficult, when there is so much work waiting to be done everywhere. In my opinion it is at least clear that the settlement of the difficulties that have occurred in the development of the riverain tracts by pump is the most pressing of

2: Dowson G-5 (1929-30) 1932 MHl Iraq MHl

185 many pressing problems. I therefore suggest that two settlement areas should be constituted in these tracts, preferably one situated on the Tigris and the other on the Euphrates. From these as starting points, settlement of these tracts could progressively be extended up and down the two rivers until they had been completed.

The above is no doubt an extremely modest programme; but it is better to begin modestly than to continue to postpone these greatly needed land reforms indefinitely. After six months practical experience in the field, and of the cost and speed of the work in three different settlement areas, there would be solid grounds on which to base plans for an extension of operations.

185 423 It will not have escaped attention that the completion of the work already partly done in the Mosul and Basra liwas is not included in this initial programme. This is not because such exclusion can be contentedly acquiesced in, even temporarily, but because it appears to me that a cessation of the appeasement that has been started in the Muntafiq, or still further delay in placing pump cultivation along the river reaches on to a healthy basis, would be even more deplorable.

9. Land Valuation

651 185 9. For reasons given earlier (ii, 4) it has not appeared useful to comment either on the recently superseded land revenue methods or on the two new laws But the old and the new appear mutually to envisage the eventual establishment of a regular land tax or Government rental, if this term is preferable. By this I mean the valuation of the land by appropriate means and the assessment and imposition of an annual payment based thereon. Thus, in the explanation issued with the displaced land tax assessment law,* the Land Revenue policy of Government was described as "the imposition of a fixed assessment in cash per unit of area of land," while the universal application of this method ultimately was foreshadowed. And Article 6 of the law required that the process of assessment should include survey, the classification of the land into grades according to the quantity and value of the produce, and the resulting assessment per unit of area of each grade.

And I understand Article 6 of the second of the new laws to provide for the early completion of the survey and valuation of all cultivated miri land and all irrigated tapu land with a view to the assessment and imposition of an annual rental thereon.

The ultimate objective in this important sphere of reform therefore appears essentially to be unchanged, and it is an objective which, in my opinion, alone offers any prospect of escape from the inequalities, irregularities, uncertainties and hardships inseparable from the wisest and most carefully considered combinations of stop-gap methods lacking a uniform and systematic basis. For pending a methodical valuation of the land there are bound to be seriously unsatisfactory features in any land revenue expedients adopted.

185 The section of the nahiya (qism el nahiya) suggested earlier as the land unit of immediate topo-cadastral survey and record (v, 7, and vi, 2) should also constitute a suitable land unit for revenue purposes, if carefully selected with this further object also in view. No doubt the quality of the land within the limits of such sections will not be strictly uniform, and may frequently include salty or other uncultivable patches on the one hand, and possibly gardens or other exceptionally fertile pieces on the other. When the conditions really justify it, areas differing markedly from the general quality of the land within the section can be excluded or specially treated; but so far as practicable an average valuation of the section should be aimed at, taking the good with the

* "Law prescribing the methods of assessment of land tax and rent due to Government," No. 40 of 1929.

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bad, especially when the section coincides with an estate (muqata'a) owned or managed as a cultivation unit. Such general averaging of the land value throughout each section may add a little to the difficulty of initial valuation, but it will enormously facilitate subsequent collection and administration of the tax and the prevention of abuse. When series of small holdings occur in a section of markedly irregular quality, subdivision of the section and more careful detailed valuation will no doubt be necessary; but such cases should be a small proportion of the whole, although in certain districts they may predominate. But having regard to the supreme importance, both to Government and to land-holders and peasantry, of getting the taxation of the agricultural industry on to a better basis throughout the whole country with the utmost dispatch, a bold policy of general averaging of value throughout each section of a nahiya should, I suggest, be adopted in the first place. Some, even considerable, unevennesses there would unquestionably be; but only by accepting such imperfections can a generally tolerable and workable system of land tax be introduced without excessive delay. And the results should be compared, not with the ideally assessed taxation of selected parcels of land that could be obtained by slow and careful work; but with the degree of solid improvement on existing conditions attainable for the nation at large and the great mass of land revenue payers within the shortest possible period. Once such a basis of general valuation existed throughout the country a progressive improvement could be undertaken. 185

Selection, definition and valuation of sections of nahiyas need not wait upon settlement. Wherever the detail survey has been completed, the former work could be put in hand and pressed forward independently. Lack or uncertainty of ownership does not prevent taxation now, and should be no bar to putting assessment on to an orderly and carefully considered basis in advance of a settlement of legal rights. And such a definition and valuation of sections ahead of settlement, accompanied as it should be by a roll of land taxpayers compiled section by section throughout nahiyas, would immensely facilitate and accelerate the subsequent slower march of settlement.

The detail survey is sufficiently advanced throughout the Irrigation Zone to enable this work to be taken up promptly and pressed forward as vigorously as staff and funds permit for a few years; but a gradual expansion of the Survey staff would be needed throughout those same years to allow survey and land valuation to proceed with the speed desirable afterwards. For it will be remembered that in accordance with the present programme another ten years may be expected to be required to complete the detailed survey of the cultivated area of the country. A delay of another ten years, in putting the Land Revenue system of the country on to a better basis, could hardly be accepted with equanimity.

In this connection I should again emphasise the extreme importance of carefully considering, and then steadfastly maintaining, the authorised programme of survey. Nothing has dissipated the efforts and the value of public expenditure provided for the Survey Department more than the continually varying demands made upon it during the last ten years. Small occasional special demands there must be; but if important national objectives, such as those under consideration, are to be secured in reasonable time and at reasonable cost, continuity of the main programme of survey work must be maintained.

No attempt is made here to consider the qualifications of the staff or the nature of the methods that would be necessary to carry out the systematic valuation of land for fiscal purposes suggested. These could be decided more usefully later should Government adopt some such procedure as outlined.

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PART VII.—MEASURES RECOMMENDED. LEGISLATION, INITIAL FEES, GENERAL CO-OPERATION

1 AND 2. LEGISLATION

185 1. I have neither thought it possible nor useful to endeavour to catalogue the many ambiguities, omissions, contradictions and redundancies of the Statute Law as it stands. The existence of serious defects in all these respects is not likely to be contested; nor that the law must be made consistent, intelligible and adequate, if the tenure of land is to be put on a clear and stable legal basis. But two conditions must be satisfied before any constructive amendment of the law can be advantageously undertaken.

In the first place we should know where we stand. In the second we should know where we are going. The first demands a careful study and authoritative statement of the existing law with a view to as complete an elucidation as possible of the points on which it is ambiguous or defective, in preparation for comprehensive clarification and amendment, as well as as a guide to those dealing with land questions in the meantime. A similar need arose in Palestine and was met by a most valuable "Statement of the Land Law of Palestine" prepared by Messrs. Goadby and Dukhan in 1927. Copies of this work were supplied to the 'Iraqi Government at the time. For although recent legislation in the two countries is different the foundation of their land law is, of course, the same. The preparation of a similar statement of the existing Land Law of el 'Iraq should be greatly facilitated by this previous work. But in el [423] 'Iraq custom and administrative practice exercise so much wider and more powerful an influence on land dealings than the statute law, that special provision should be made to include them in an appropriate manner in such a statement.

I recommend that two competent officers shall be nominated by Government to undertake this important preparatory work. I suggest that one of these shall be an officer with legal training and knowledge of the existing land law and of its administration in the Courts, and that the other shall be an officer with personal knowledge and experience of the actual practices prevailing in the holding, use and transfer of land throughout the country. These officers should be instructed to make specific recommendations in due course for the progressive amendment and codification of the Land Law.

The second requisite preliminary is a decision by Government on the critical questions of principle or policy, which occasioned the present inquiry, and on points of law which are presented in the suggested statement.

2. The direct object of a general settlement of rights is the establishment of land tenure progressively throughout the country on a firm foundation of legal right determined in a judicial manner on the spot with reference to actual and physically defined parcels of land. Moreover, to perpetuate the definition and security of tenure thereby obtained, the results should be suitably incorporated in an effective record (or Land Register) which thereafter is continuously kept up-to-date. The whole

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process calls for a body of carefully considered and carefully co-ordinated legislation. 185

By whatever methods the initial settlement is conducted there must be a lengthy period during which land holdings are in one of three distinct conditions: (*a*) their initial unsettled condition, (*b*) a transitory condition while undergoing settlement, (*c*) an ultimately settled condition. A similar distinction should be preserved in the legislation applying to the three. The first stage is intended to disappear finally, if gradually, so that legislative provisions applying to it alone should disappear with it. The second is also a transitory stage, which should be governed by a special law for the settlement of rights to land. This law should provide the necessary authority for, and prescribe the general conduct of, the settlement. The character of the process and the nature of the procedure have already been discussed. The third stage requires legislation designed to place the land law and land tenure of the country permanently on a sound footing. The detailed elucidation of the existing land law and operative practice recommended above should furnish the necessary foundation for the progressive amendment and re-enactment of the whole land law that is needed. This should include a new law providing for the regular registration of rights to land subsequent to settlement, which would replace the various Ottoman laws and regulations on the subject now in force.

The preparation of the full body of legislation needed will demand a good deal of study, effort and time. It is useless to enact it unless the Government have carefully weighed the need and have given the requisite measures their considered approval. They are unlikely to do this unreservedly or finally on the strength of even the most careful and thorough preliminary study alone. And even if they did so the legislation would be sterile until some simple organisation for the general conduct and co-ordination of the work had been established, suitable settlement officers appointed, effective investigationary and technical procedure adopted.

It therefore appears on all grounds advisable to pass legislation of a provisional nature in the first place, providing for the abrogation of the existing law for the settlement of disputes of Muntafiq lands, if and when deemed advisable, and for the execution of settlement on the general lines recommended and in such areas as Government may decide. This would have the advantage of combining a practical test of these recommendations with an immediate and realistic attempt to settle the problems of the pump areas in a methodical way. Concurrently the preparation of the legislation needed to continue the work on a more fully considered and permanent basis could be prepared thoroughly and carefully.

In preparing legislation it must never be forgotten that settlement of rights to land and the establishment of a stable land tenure in el 'Iraq are practical operations of an intricate nature dependent upon the conscientious execution of a steady programme of investigation and survey carried out day by day in the field for a great many years in co-operation with landholders and people. The quality of the officers entrusted with the work, the suitability of the procedure employed and the degree of co-operation obtained will be the critical determinants of failure or success. Bad laws may readily retard, multiply the cost of, jeopardise, or even prevent the attainment of reform: although a considerable degree of success can sometimes be obtained by good officers operating good investigatory and technical methods in spite of defective laws. But failing these essential agents and methods the best laws would remain idle instruments or be viciously misapplied. Suitable legislation

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185 is, of course, required to empower and consolidate success : but it cannot do more. And it will only be suitable if it is designed to give statutory endorsement to very carefully considered and thoroughly well-tested detailed procedure.

But while general knowledge of the practicable requirements of land reform, applied in the light of local conditions and local experience, can alone supply the material for the planning and execution of the necessary measures, this material can only be transmuted into successful legislation by a skilled legal draftsman, himself thoroughly conversant with the existing land law, working in consultation with accredited representatives of the public services responsible for the execution of reform.

I emphasise these points because the history of land reform in el 'Iraq is punctuated by abortive measures which appear to have been drawn by various executive officers without adequate legal assistance and without proper previous discussion. In a matter of such far-reaching importance and complexity, as the measures of land reform now projected, personal ability and the individual view point of even the most important Departments of State, are insufficient. Successful legislation will demand the careful preparatory team work of all the public services primarily concerned and the skilled expression of a trained legal draftsman, or at least of a professional lawyer.

There seems to be an inclination to feel that something of positive value has been achieved if a law purporting to give effect to some benevolent or public-spirited intention has been placed on the Statute Book, however unworkable such a law may be. But this feeling will not stand intelligent examination or satisfy any patriotic legislator who seeks more than documentary results and facile applause. In sober fact, academic aspirations and indifferent legislation appear to me to have been the worst enemies of practically realisable reform in the country hitherto.

3. Considerations of Initial Cost and Fees

8. The principal difficulty in carrying out a settlement of rights to land in el 'Iraq will no doubt be the initial cost. It is impossible to make any useful estimate of this cost on the basis of the numerous hypotheses that would be inevitable at present. But it will be evident that work on the modest lines proposed above could be initiated at a very small cost, particularly having regard to the importance, both to the nation at large and to the parties immediately concerned, of making an early effort to secure a more satisfactory return from the capital and effort sunk in the pump development of the riverain tracts during the last ten years. The financial provision needed for the first year's work would amount to little more than the cost (i) of equipping and maintaining the three suggested Settlement parties possibly for eight months in the field and for the remaining four at Headquarters, or elsewhere, and (ii) of establishing a Land Court a few months later. As against this the cost of the present Muntafiq Commission might be saved. The requirements of the Survey would not be materially affected. The introduction of the General Land Register could advisedly await the conclusion of the initial year's work. Although the speed and cost of the work in such an initiatory stage would be gravely misleading as an index of future progress, since both would rapidly improve from year to year, yet a considerably better forecast could be made in the light of the experience gained by actual trial than by the most elaborate estimates that could be furnished now.

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Although public funds will benefit directly by methodical and equitable assessment and imposition of land revenue, and indirectly by the steady increase in prosperity which should follow if settlement is accompanied by complementary developments in irrigation and agricultural conditions, yet these financial returns will not be immediate. The immediate problem of finding the funds needed to initiate settlement would be lightened or removed, if the cost could be promptly recovered from the individuals whose rights to land are thereby recognised and secured. Now settlement is essentially the clearing up of disputes and uncertainties inherited from an indefinite past. It has been necessitated in el 'Iraq by the failure of past governments to keep their records of mulk, tapu and miri land properly. It is now required in the interests of the nation as a whole, and the national budget will benefit generously by it in the future if it is accompanied by appropriate complementary measures. While therefore it is proper that individuals and corporate bodies should pay fees for the recognition of their rights in mulk, in tapu and in waqf (just as they would legally have been required to do if the existing Land Registers had been functioning properly hitherto and registration of all changes had been required, as they occurred): it is not equitable that they should repeat any payments they themselves have already made to the existing Land Registry or pay on a higher scale than may be needed to maintain the General Land Register in the future. It will, of course, be understood that the fees referred to here are genuine registration fees only, not acquisition payments on obtaining land in tapu tenure initially.

The settlement and record of rights to hold and use miri land stands on a different footing. It would not intrinsically be in any way inequitable to charge a suitable fee upon recognition and record of these rights also: but it would, I think, be inexpedient and inadvisable to do so upon initial settlement. If settlement is to be carried out with the utmost practicable speed and economy it is essential that everything possible should be done to encourage and ensure the presentation of all claims promptly at the appropriate moment. The degree of smooth and punctual co-operation secured between the great mass of claimants and the Settlement parties will primarily determine the speed and success of the work, while these in turn will primarily govern its cost. The bulk of mulk and tapu claimants and of custodians of waqf interests may reasonably be relied upon to appreciate the advantage of assisting the settlement and of consolidating their recognised rights by due and proper record: but the bulk of holders and users of miri land may be expected to be illiterate and very possibly suspicious of ulterior designs on the part of Government. Nothing will facilitate, accelerate and therefore cheapen, settlement so much as waiving all fees on the initial settlement of miri land. The poverty of the majority of such land is too great to admit of any really adequate scale of fees being imposed. And it may be predicted with some confidence that the saving in the cost of the work occasioned by foregoing such fees will more than compensate for any effective revenue lost thereby.

4. General Co-operation

4. In previous sections attention has been primarily devoted to the objectives, methods and procedure of the various agents directly concerned in one way or another with the conduct of reform. But a really national effort will be required if success is to be achieved. The necessity of winning the confidence and securing the prompt and willing co-operation of the great mass of landholders and cultivators has probably been sufficiently stressed already. The necessity of ensuring the continuous and effective co-operation of all branches of the public service,

185 and more particularly of the provincial administration, is as great. Provincial officers can assist the settlement in more ways than can possibly be mentioned without in the least interfering with the independence either of its judgments or of its progress. They above all others could prepare and educate public opinion by explaining beforehand the objects of the work and the character of the procedure to those with whom they are brought in daily contact. This would go far towards preparing men's minds and making them ready to participate promptly and effectively when their turn came. And it is only provincial officers who, by patient influence and persistent firmness, will be able gradually to enlist the assistance of landholders and cultivators in the protection of survey reference marks and in the regular notification of those that are displaced. The possibility of survey and provincial officers working in conjunction in advance of settlement to subdivide nahiyas into sections suitable for purposes of survey, record and fiscal assessment has been previously mentioned. It would also facilitate, and consequently accelerate, the work very materially if each local officer (mudir el nahiya) could provisionally collect and tabulate all claims to each of such sections of his nahiya in preparation for the settlement officer. I saw in Kut liwa schedules of information concerning pump areas and other estates which would be most helpful. Analogous records exist in other liwas.

The co-operation of the provincial authorities, as well as of other interested services, would also be needed to define provisionally in advance of settlement the areas that should be reserved (*a*) for public utility waterways, roads, railways, historic sites, (*b*) for particular tribes or communities, (*c*) for projected national forests, pastures, etc. etc. But such examples could be multiplied indefinitely.

The importance of general and sustained co-operation from all national elements who are in a position to do so cannot be exaggerated. The degree to which it was secured might readily decide success or failure. It would certainly affect decisively the quality and cost of the proposed settlement of rights to land throughout el 'Iraq and the period taken to complete it.

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PART VIII.—MEASURES RECOMMENDED. ADMINISTRATIVE ORGANISATION

1–8. Unified Planning and Direction of Reform

1. It will be remembered that among the defects which Government expressly sought to cure was the pursuit of reform by three independent Departments of State without proper co-ordination and on no connected plan. I have ventured earlier to express the view that these Departments were not in a position to adopt a suitable common plan or to pursue it unitedly. But it is also important to realise that their Departmental duties are not properly reconcilable with the conduct of the requisite reforms.

In considering the administrative organisation of reform it is desirable to distinguish clearly between the men, measures and machinery needed: (i) to produce order initially out of the chaos inherited from past centuries, and (ii) to consolidate and perpetuate this order as it is secured. These two processes may be conveniently called the execution, and the conservation, of reform.

The executive programme of reform should co-ordinate in one carefully balanced and united effort:

(i) The study and revision of the land law.

(ii) The completion of the topo-cadastral survey.

(iii) The systematic valuation of the land for revenue purposes.

(iv) The general settlement of rights to land.

The economy, speed and quality of the results will depend upon the efficiency of the combination secured. But although the importance of the initial execution of reform is supreme, and although it will necessarily occupy many years, yet administratively, legally and financially it should be recognised to be a special, terminable, capital effort.

The conservation subsequently of the benefits secured by this initial capital effort would necessitate administratively

(i) The progressive establishment, and maintenance up-to-date thereafter, of a General Land Register or Land Book.

(ii) The corresponding maintenance up-to-date of the complementary topo-cadastral survey.

(iii) The establishment of suitable ancillary land revenue records based on the above.

Throughout this Report I have avoided any detailed discussion of these conservancy measures: because the execution of initial reform is a sufficiently complex matter and is independently justified. And it seems more reasonable to defer consideration of methods of conserving reform, until it has been decided whether such reform will be undertaken. It may, however, be observed that if the requisite reforms are carried out successfully, there should be no intrinsic difficulty about subsequent conservation of the results; although it will demand a thoroughly efficient

organisation. Moreover, the current cost of such conservation should be balanced by current fees.

But if it is reasonable and proper to defer consideration of conservancy measures which may or may not be needed, consideration of the administrative organisation best suited to give effect to these measures can also be deferred.

2. If the activities to be co-ordinated in the execution of the initial programme of reform are again referred to, it will be seen how slight is any functional aptitude of any of the three specified Departments to undertake this work, and how strong are the reasons of public policy that should preclude them from participation in its conduct. The necessary study and revision of the land law must in any case be taken up by specially selected individuals. The completion of the land survey is the express business of quite another department. Land valuation could no doubt be undertaken by the Revenue Department and the Survey Departments in co-operation, if this was a solitary measure; but it will be more easily, cheaply and satisfactorily effected as part of the general programme of reform. Moreover, it is really preferable that this valuation should be carried out by an organisation occupying a midway position between the fisc and the taxpayer, and not functionally concerned with raising revenue. Again a general settlement of rights is a process that none of the three departments mentioned are in any way organised or equipped to undertake. Such a settlement will necessitate a special staff and special arrangements in any event; while it is imperative that the judicial character and independence of the proceedings shall be unchallengeable. This dominant consideration should preclude all idea of settlement being conducted by either the State Domains or the Tapu Departments. For the State Domains should be responsible for presenting the State's rights as a landholder throughout the whole course of settlement and will thus occupy a partisan position, although most rightly and properly. And during the course of the work the settlement authorities will be continuously required to scrutinise, interpret and adjudicate on Tapu documents and records. It will be the duty of the officials of the Tapu Department to do their best to expound and explain such material to the settlement officers; but the latter must be open to no charge of departmental bias influencing their decisions.

But although the Departments of Revenue, of State Domains and of Tapu should be dissociated from any participation in the execution of reform, and although they cannot be justly held responsible for failure to unite to produce and promote a programme of such reform in the past, yet the serious character of the defect in organisation indicated by Government, is only emphasised thereby. It is to the lack of a competent executive authority charged with the unified study and conduct of the necessary reforms, that the persistent failure of successive governments throughout the last decade to proceed from discussion to action must be primarily attributed. For the volume of memoranda and correspondence on the subject from the early days of the administration onwards, shows a constant and clearly understood appreciation of the need to put the systems of land tenure and land revenue on to a healthier basis. In the early days settlement of rights indeed appears to have been actually started in one or more districts. But during the latter half of the period the discussions have been characterised by uncertainty and disagreement as to the methods and means whereby the necessary objectives might be attained.

If a single central authority, possessing vigour and initiative, had been responsible to Government for the planning and general direction of the requisite reforms, a mass of sterile interdepartmental discussions

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would have been avoided and some practical effort to discharge this responsibility must have been made. And no sincere, sensible and united effort could have failed to benefit by the lessons of experience and to have achieved a considerable degree of success by now. If my assistance had still been necessary I should hardly have had to devote time and energy to unearthing and collating details of elementary information needed to arrive at trustworthy primary deductions. This was work which an established organ of Government would have done gradually and methodically year by year, with fuller and more reliable results. But neither organised preparation for, nor organised execution of, these vitally important national reforms was to be expected as the by-product of the unrelated activities of three public services charged with other primary responsibilities. 185

8. Organically therefore the imperative need is to establish as soon as possible in the central administration of Government, a service expressly and exclusively charged with the continued study, preparation and general direction of the measures of executive reform named a little earlier. All that is needed at this stage, and all that is desirable under present conditions, is quite a small office to act as the thinking and directing organ of executive reform. For here again reform must be initiated on the simplest lines that will satisfy bare essentials. But, although the Central Lands Office can be small, its influence and authority within the wide field of its responsibility must be effective. And although every effort has to be made to initiate reform cheaply, this Office must be made efficient if it is to fulfil its purpose and replace in the counsels of Government all unco-ordinated sectional advice.

The main functions of the Central Lands Office may be summarised as follows. It should be the central clearing house, depository and advisory office of Government on all matters of public policy regarding the tenure and use of land. It should have general administrative direction and control of the procedure and operations of settlement and land valuation, which should be treated as a conjoint enterprise. This direction and control should include that of any unavoidable sporadic operations. In the case of such sporadic investigations into existing registered tenures, any necessary measures should be concerted by the Tapu Department and the Central Lands Office in consultation. The Central Lands Office should also have the necessary authority to secure the complete and fully co-ordinated co-operation of the Survey Department in the execution of the programme of settlement and land valuation adopted. The necessary legal assistance should be placed at its disposal, to enable the requisite legislation (and orders thereunder) to be properly drafted, and the progressive amendment of the Land Law to proceed steadily. It should also, with the least possible delay, make a start to ensure the regular collection, tabulation and mathematical scrutiny of all important statistics relating to the land. Such statistics could be collected by the most appropriate or most convenient branch of the public service in each case, but their tabulation and mathematical scrutiny will be carried out most economically and efficiently by the Mathematical Office of the Survey with the assistance of calculating machines.

It should perhaps be emphasised again that the general administrative direction and control of settlement and land valuation exercised by the Central Lands Office must not confer or permit any power to review, criticise or alter any actual decisions of settlement or valuation. The independence of such decisions of all administrative modification must be absolute and indisputable. On due and proper occasion the former will be subject to appeal to the proposed Land Court, while some independent expert body qualified to review and revise land valuations when required would also be necessary.

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4. The general direction and control of all survey work should be left to the technical head of that service. Any administrative subordination of the Survey Department to the small Central Lands Office would only be an inconvenience to both sides and nothing is to be gained by it, if it is clearly recognised that the Survey Department's primary duty is to co-operate as closely and effectively as possible with the Lands Office in carrying out the Government's general plan of land reform. For purposes of the programme of land survey, that plan must provide for the progressive requirements of concurrent development in other branches of work, notably of irrigation; but no departures from the approved national programme of survey should be permitted without the concurrence of the Central Lands Office, as the plan of general land reform, its cost and its speed, will be dependent upon a steady and punctual performance of that programme.

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The Survey Department is rightly recognised to be a specialist scientific service; and good work has been done in organising and equipping it for its duties. But its importance as an agent of economic progress appears to me to be insufficiently appreciated, while circumstances have interfered with its vigorous use in the steady execution of a national programme of land survey drawn up in consultation with the public services primarily concerned. It also possesses serious weaknesses which must be cured if it is to play its essential part in the well-co-ordinated effort without which the successful development of the country will remain a dream.

The land survey of a large, varied and previously unmapped country, like el 'Iraq, is a formidable scientific operation. It would be wasteful and short-sighted to an extreme degree to grudge the few additional specialist officers and the gradual addition to its accommodation and resources that are needed to enable this indispensable service to carry out its work punctually, reliably and to proper general advantage. A first-class Observer to push on with the primary triangulation is long overdue. Effective measures must be taken to protect survey reference marks. Additional specialist assistance is greatly needed in the Mathematical Office and in the performance of the chain of scientific processes whereby the surveyors' field work is reproduced and published as series of national maps. Map drawing, map reproduction by modern photo-metal processes and map printing, under the difficult climatic conditions existing in Baghdad, call for great skill, knowledge and experience, if they are to be successfully and economically performed. The publication of the Department's maps is very much in arrear, as has been already noted. And yet the value of national expenditure on survey operations is seriously minimised if the work remains locked away in the Department's cupboards in the form of original drawings, instead of being published in printed maps available to all. More systematic provision for the training of Iraqi staff in the technical operations of survey is also very necessary.

And timely consideration should be given to the whole question of the situation of the Survey Department and the arrangements for its present and future accommodation. The present site of the Department is, or is likely to become, valuable; and it is by no means the most suitable for the delicate processes of map reproduction. Again a fireproof map store is badly needed. The original field sheets and records of the Survey (and to a lesser extent its eventually published map series) represent the capitalised value of all the expenditure of past years on this branch of work. The set back to the country if all these records were destroyed as development of all sorts was at length getting well

under way, would take many years and a large expenditure of money to retrieve. And such wholesale destructions of valuable public documents have quite frequently occurred elsewhere. Perhaps an opportunity might be found to transfer the whole Department to less valuable, less busy and less dusty, but more commodious precincts, where its map reproduction offices, its map stores, etc., might be planned for gradual expansion as the Land Survey of the country extends. Scientific organisations, such as this, depending upon the punctual co-operation of numerous specialist branches are wasteful to administer if badly arranged and they are costly to move after they have been long established. A central urban situation is neither necessary nor desirable, for the Headquarter Offices of a national land survey.

3. Another matter calling for early consideration is the amalgamation of the two existing organisations charged with the conduct of land survey—the Survey Department proper and the Survey branch of the Tapu Department. The Survey Department has had a somewhat chequered career; but two important steps in the direction of constituting it the single unified national service that is required for the economical and effective conduct of land surveys, appear to have been previously taken. In 1922 about half of the survey staff of the Tapu Department were absorbed by the Survey Department proper; while in 1923 the Irrigation Department, which had previously carried out its own surveys, transferred its Survey Division to the Survey Department. The process should now be completed.

When I was in el 'Iraq the comparable field staff of these two existing land survey services were returned to me as follows:

Survey Department	*Tapu Survey Branch*
8 Survey Officers	1 Director (Mudir)
14 Inspectors	4 Inspectors
100 Surveyors	58 Surveyors

I wish to make it clear that the development of its own little Survey Department by the Tapu Department is a matter for commendation: not for reproach. That Department realised acutely the need to define with some approach to accuracy the parcels of land which were purported to be held on tapu tenure. The National Survey were either non-existent or too weak at the time to assist, so that two parallel survey organisations were established.

The arrangement is none the less indefensible and absurd from the national standpoint. If the land surveys carried out by the smaller organisation are necessary in the public interest they should be carried out under the technical direction and control of the competent public service. In the course of this report various weaknesses in the Survey Department proper have been indicated. Of the lesser service it may be briefly said that, in spite of much keenness and appreciation of technical needs it is not, and cannot be, either properly organised and equipped or adequately directed technically to execute land surveys of the quality and permanence which expenditure of public funds should secure. No country, and particularly no country which requires the utmost economy and efficiency of effort to promote its primary development, should attempt to maintain two organisations to carry out the indivisible task of a national land survey. It is otherwise with what may be called engineering surveying or lay-outs for railways, roads, etc. These are sectional operations which can be best performed by the Engineering services concerned; but even these services should, and no

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185 doubt would, make the fullest use of the National Land Survey and leave all genuine land survey operations to it.

I do not advocate any hasty change. That would probably do more harm than good. But I venture to urge that it should be accepted in principle that this duality must be terminated as rapidly as the mutual convenience of the Survey Department proper and the Tapu Department permit. And among the duties of the proposed Central Lands Office should be the examination at an early date, in consultation with the Tapu Department and the Survey Department, of the comparative public advantages (i) of continuing to carry out the Tapu Department's special programme unabated, or (ii) of employing a portion of the resulting addition to the Survey Department's resources on the greatly needed acceleration of the national programme. I am not questioning the intrinsic value of the former, and so far as it meets specific Land Registry needs which are covered by fees received, it should doubtless be continued; but it may well be that on mature and comprehensive consideration the acceleration of the national programme of survey may justify some sacrifice of the more purely departmental work.

6. Administration of Areas Awaiting Settlement

6. However intensively, and by whatsoever methods, a general settlement of rights to land is conducted, there will for many years be a large balance of unsettled holdings, which balance can only be very gradually redressed. The satisfactory administration of these unsettled holdings pending their turn for settlement, is one of the most serious problems of the transition period; but it is clearly one that will be more manageable and better understood, if homogeneous settled and unsettled areas are maintained so far as possible. Any attempts to effect a general settlement sporadically would not only dissipate energy and resources (as previously pointed out), but also further complicate the administration of unsettled land by causing settled and unsettled holdings to occur increasingly intermixed side by side. It has already been recognised that sporadic settlement of some special holdings will be necessary: but this should not occasion undue difficulty if it is restricted to really necessary cases.

185 It is the current mangement of the enormous extent of miri land
647 during the years preceding settlement that is however the main problem. This must in practice be conducted for the most part, as at present, by the local officers of the provincial administration, except in areas under some form of tribal or sectional occupation. Some measure of central supervision and control must be maintained. This can continue to be exercised most suitably by the State Domains Section, which, I believe, is now administered in association with Land Revenue, under the Ministry of Finance. In advance of settlement this association of
185 functions appears to me to be both an economical and a convenient arrangement. If land valuation is undertaken methodically in the manner suggested, there will gradually be formed in advance of settlement a national roll of land revenue payers who will also for the most part be claimants to prescriptive rights to hold and use miri land. So that the connection between the supervision of miri land and of land revenue will throughout the pre-settlement stage be close. After settlement the work of both services should be greatly simplified and new arrangements would probably be required; but these can be more usefully discussed after the measures of executive reform to be undertaken have been decided.

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In advance of settlement, and pending the establishment subsequently of a General Land Register, map records should be constituted showing the position of all land authoritatively reserved for public purposes, or forming the subject of special concessions. These should be kept in duplicate through the agency of the Survey Department at the Headquarters of each liwa and in the capital. All Departments should be instructed to collaborate in the preparation and maintenance of these records, whereby the waste of public funds and the injury to public interests occasioned by conflicting arrangements and authorisations to utilise land might be quickly eliminated, without waiting for the gradual advance of settlement. 185 645

All proposed reservations of miri land, all proposed concessions and all proposed expropriations of mulk or tapu land should be examined by a small committee representing the bodies principally concerned in the administration of land or of its use for public purposes. These proposals might then be submitted with the committee's recommendations to the proper Minister, who I take it would normally be the Minister of Finance as custodian both of the public purse and of miri land. In this way all important public interests would receive consideration before land was reserved, conceded or expropriated for any special purpose. To make the record as complete as possible the location of all existing reservations, concessions, etc., should be examined and defined, so far as available information permits. In the case of urban areas the local record would most conveniently be kept in the town concerned.

Since the proposed record is in the form of maps indicating specific locations of land, the work of constructing and maintaining it should be entrusted to the Survey Department. The Headquarter Offices of the Survey would also be the best place to keep the authorised duplicates of the local maps, so that all changes could be regularly and easily incorporated. A Survey Officer might also conveniently act as the Secretary of the suggested Examining Committee.

7 and 8. Ministerial Grouping of Services

7. If settlement of rights and land valuation are undertaken on the lines recommended, four Departments of State will be required to perform important functions; but there is a sharp division in the nature of those functions, as already noted.

Two Departments will be charged with the execution of these reforms, viz. the Central Lands Office (with its settlement and valuation field parties) and the Survey Department. Two other Departments, viz. the combined Land Revenue and State Domains Department, and the Tapu Department will be charged respectively with the presentation and support during settlement and valuation (*a*) of the interests of the State as the largest landowner and the collector of land revenue and (*b*) of the registered rights to mulk, tapu and waqf interests.

The two former will be called upon to discharge the functions of impartial and disinterested investigators and recorders of duly established rights. The two latter will be called upon to expound and support as strongly and ably as possible the particular public interests or private rights for which they are responsible.

The first of these services has still to be created and attached to some Ministry. The other three are already in existence, attached respectively to the Ministries of Economics, Communications and Works, of Finance and of Justice. In pursuance of the general inadvisability of

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making avoidable changes at this stage these existing arrangements should not be disturbed. The Central Lands Office would in my opinion be most advantageously attached to the Ministry of the Interior. The supreme importance, for speedy and economical working, of the general and widespread co-operation of the provincial staff of the Ministry of the Interior, both during and in advance of settlement, has previously been emphasised. Indeed, the conduct of settlement, which so closely affects the security, contentment and peacefulness of the whole mass of landholders and peasantry throughout the country, must in any case be a dominant interest and responsibility of the Ministry of the Interior. It is better that this interest should be directly safeguarded and this responsibility directly discharged, by the Ministry most intimately concerned. The arrangements in the field for securing the attendance of claimants and witnesses, as well as for orderly conduct of operations would in any case have to be made by the provincial staff of this Ministry. Settlement Officers and their principal assistants must also for the most part be drawn from the same staff, for that staff constitutes the only body of public servants who combine the necessary qualifications with the necessary experience. Moreover if the Ministry of the Interior undertakes administrative charge of the work, it will be a simpler matter to make changes in the personnel, than it would be if such changes involved transfers to and from another Ministry each time. For while it can be said with confidence that Settlement Officers and Assistant Settlement Officers should normally be recruited from the staff of the Ministry of the Interior, it is not to be expected that all those selected will find the work congenial or will prove successful.

8. I understand that the Ministry of Finance incline to the view that the general administration of settlement and land valuation operations might more appropriately be undertaken by that Ministry. This course would, in my opinion, be inadvisable both in the financial interests of the State and in those of the proposed reforms.

It must, I think, be recognised that the Ministry of Finance occupies an essentially different position and performs essentially different functions to, all other Ministries of State. It is the primary duty of all other Ministries to administer efficiently the specific branches of the public service, executive or judicial, allotted to their control. On the other hand, the distinctive and all-important duties of the Ministry of Finance are (i) to inspire, supervise and control all the operations of Government in so far as they affect the financial position of the State, and (ii) to nurse the economic resources of the country, to study all potential sources of revenue and to make these contribute fairly and without injurious reaction to the income of the State.

The Ministry of Finance must necessarily administer its own financial services; but I venture to think that, otherwise it should aim at as complete a detachment as possible from those administrative and executive functions of Government, which it is its duty to criticise impartially and control closely from a financial standpoint. Not only do the Ministry of Finance's wide and supremely important range of financial and economic functions demand its exclusive and fullest attention, if they are to be performed with any approach to the high standard needed; but the Ministry's duty as the financial watchdog of the State cannot be discharged with the same detachment, and is unlikely to be credited with the same disinterestedness, when applied to its own proceedings.

On these grounds alone it appears to me highly undesirable that the Ministry of Finance should itself assume administrative conduct and control of a new and formidable undertaking which is no part of its financial duties.

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I also believe that the Ministry of Finance, as custodian of the public purse, regards itself as the natural trustee and manager of State land and I imagine that it was on this account that the duties of the late State Domains Department were resumed by the Ministry of Finance. Subject to the considerations just urged, no exception to this view is called for, and the transfer was logical. But it should be recognised that (*a*) the current management of, what may be termed, the national estate (miri) and (*b*) the proposed systematic settlement of rights and valuation of land, are not only different but mutually incompatible, undertakings.

During the process of settlement innumerable cases are bound to arise in which the immediate and direct interests of the State, as landowner, will conflict with those of private individuals. It is essential that the former shall be presented as wholeheartedly and singlemindedly as the latter, at every stage of settlement operations. This is a duty which very properly pertains to the Ministry of Finance as custodian of the public purse. For the vast territories of the national estate (miri) represent by far the most important capital asset which el 'Iraq possesses, not excepting her petroliferous deposits. As custodian and advocate of the landed interests of the State in its capacity as landowner, the Ministry of Finance occupies the position, and should be free to act without distraction, as a profoundly interested party. Subject to the general conditions of the settlement law, it should, as a general matter of principle during settlement, offer a healthy opposition through its appropriate Department to all claims to rights over land statutorily in the ownership of the State.

And similar considerations apply to the general methodical valuation of land for fiscal purposes. Here again the organisation charged with execution of the task should occupy a position of cold scientific detachment. Here again there should be provision for appeal from the decisions of the settlement authorities under proper safeguards against obstruction or frivolous abuse. Here again the Ministry of Finance, as custodian of the financial interests of the State, should act as the vigilant and unhampered exponent of those interests. And here again landholders and other parties directly concerned may be relied on to exercise no less vigilance in their endeavours to ensure that the approved results do not unduly favour at their expense, either their neighbours or the State.

In short, the successful and satisfactory execution of settlement of rights and valuation of land for fiscal purposes, requires complete freedom on the part of the Ministry of Finance to defend the financial interests of the State, whether represented by its capital assets in land or its prospective revenue. And such a successful and satisfactory execution also requires a position of recognised and unchallengeable impartiality on the part of the Ministry responsible for the administrative conduct of these operations. On these further grounds also it appears to be most undesirable that the Ministry of Finance should undertake this part of the general task.

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PART IX.—GENERAL REVIEW OF PROBLEM

1. Old Conditions and New

000 In conclusion it may be useful to review the problem in the wider setting of the general agricultural development which it is the main purpose to stimulate and serve. The land traversed by the historic rivers of el 'Iraq was one of the cradles of civilisation. It has been the seat of a succession of famous kingdoms. It was one of the birthplaces of artificial irrigation. If not the earliest, it was the best known, source of mineral fuel. And from time immemorial it has been recognised as one of the most fertile areas in the world. The country thus played a part second to none in earlier days and still possesses exceptional natural resources. Unfortunately these initial advantages have been nullified by centuries of unprogressive administration and by the unprecedented progress in human organisation and scientific advance made in the meanwhile elsewhere.

439 In ancient days bursting granaries represented prosperity and constituted wealth. The old world was small and its good grain lands scarce; while those of el 'Iraq were productive and accessible by the leisurely transport of the time. To-day the grain lands of civilised man circle the globe; while science and organisation have enabled him everywhere to enhance quality and yield many fold, as well as to obliterate distance. Moreover, with increasing individual well-being and vastly increased control of the earth's resources, mankind is eating a smaller proportion of bread and demanding a greater proportion of other commodities. And since he has the whole world competing to meet his requirements everywhere he is selecting higher quality, cleaner, better graded, better packed produce and rejecting inferior supplies. There is a belief prevalent in el 'Iraq, as in other countries, that combines, rings and other marketing associations have power to affect the nation's trade critically. Temporary and restricted effects they may have: but the modern world is too closely knit together and the volume of its trade far too large and too complex to allow such manœuvres to prevent any reliable supply of satisfactory goods from finding its proper market before long. And since solid and efficient trading associations are partners in the nation's prosperity, it is to the interest of all such associations to promote the expansion of the country's trade and the reputation of its goods in the world's markets.

185 But el 'Iraq to-day must be recognised as being in the position of an old estate, previously rich, still very valuable potentially, but now derelict through long bad management, accentuated by changing needs and progress elsewhere. And its difficulties have been enhanced by its unfavourable transport connections with the outside world, as judged by modern requirements. Subject to the over-riding necessity of preserving public order and contentment and to the steady improvement of communications, the country's primary need is the reclamation of its derelict national estate and the regeneration of its agriculture. No intelligent and progressive person inheriting such an estate would fail to recognise the wisdom of spending on it the capital sums needed to bring it to a high pitch of prosperity again. Such expenditure planned on well-considered lines, carefully managed financially, and devoted

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solely to the productive regeneration of the estate, should soon prove a profitable investment. If the accompanying returns of Budgetary Revenue and Expenditure during the nine years 1921-29 are referred to, it will be seen how small a sum, both absolutely and relatively, the Government has been able so far to allot to land development services. And

TABLE VII. TOTAL BUDGETARY EXPENDITURE, 1921-1929

Nature of Service	Expenditure in lakhs of rupees	Percentage of total expenditure
General National Charges*	325·5	6·9
Finance	619·4	13·1
Interior	1,068·3	22·7
Health	221·9	4·7
Defence	980·1	20·9
Justice	125·2	2·6
Education	223·2	5·0
Communications and works ..	680·6	14·5
Lands Services†	454·0	9·6
Total ..	4,698·2	100·0

*Civil List of H.M. the King, Parliament, Council of Ministers, Comptroller and Auditor-General, Ministry of Foreign Affairs, Public Debt and Pensions, Antiquities and Census Departments.

†Departments of Irrigation, Agriculture, Veterinary Service, Land Survey, Tapu, State Domains and Ministerial Services of the Ministry of Irrigation and Agriculture during its existence.

necessarily only a modicum of that sum could be utilised for capital improvements. If expenditure on capital development continues to be limited to what can be spared from current resources, it is to be feared that the economic revival of the country must be indefinitely retarded.

TABLE VIII. TOTAL BUDGETARY REVENUE, 1921-1929

Nature of Revenue	Revenue in lakhs of rupees	Percentage of total revenue
Direct Revenues from land*	1,619·3	32·7
Customs and Excise	2,248·4	45·4
Post and Telegraph Receipts ..	287·1	5·8
Other revenues	795·7	16·1
Total ..	4,950·5	100·0

*Land revenue, animal tax, receipts of land services, mines, rents of Government property, etc.

2. Three Spheres of Reform

2. In the northern Rainfall Zone the effects of past neglect are less obvious and the problem of agricultural development less intricate owing to this area being predominantly independent of irrigation: but otherwise there is just as great a need for a steady programme of agrarian reform here as in the South.

The three great obstacles to the agricultural development, and, therefore, to the economic advance of el 'Iraq may be summarised as:

in the south (*a*) the absence of an adequate irrigation system, and throughout the country

(*b*) the rude methods of cultivation and stock-keeping practised, and

(*c*) the chaotic state of land tenure.

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312 The inadequacy of the existing irrigation system is generally recognised in so far as it relates to the great incompleteness of the network of engineering works needed, such as storage reservoirs, flood embankments, regulator constructions, delivery and drainage channels: but it appears at present to be insufficiently appreciated in the country that the proper utilisation and maintenance of these expensive works is even more important than their construction and probably calls for greater technical skill at the outset. It is a serious mistake to suppose that the management of a great engineering undertaking, such as a national irrigation system, is a simpler problem than its design and construction, or that such management can be economically and wisely left to inexpert hands or to officials primarily occupied with other duties.

242 The primitive methods of cultivation, stock-keeping and disposal of produce prevalently practised, as well as their marked effect on the quantity and quality of the country's output and on its reputation in the world's markets, have been repeatedly emphasised and need only be mentioned here.

439 To build up her prosperity el 'Iraq must evidently develop her export trade both quantitatively and qualitatively. It is therefore of

TABLE IX. MAIN AGRICULTURAL EXPORTS DURING FIVE YEARS 1925-6 TO 1929-30

Product	Quantity in thousands of tons	Value in lakhs of rupees
Living animals (horses, camels, cattle, sheep, goats, etc.)	835·6*	67·7
Raw cotton	3·2	32·7
Dates	624·3	902·1
Grain, etc. (barley, pulse, rice, wheat, etc.)	566·2	449·1
Hides (cow, sheep, goats, wild animal, etc.)	9·3	171·9
Intestines (casings)	0·6	70·1
Raw silk	0·005	0·7
Tobacco	0·8	9·2
Raw wool	32·4	368·2

*Thousands of animals.

great importance to follow the statistics of external trade continuously and to endeavour to adjust the country's agricultural output unceasingly to world demand. Unlike the various land statistics, which have proved so difficult to collect and so unreliable when collected, the Trade statistics kept by the Customs and Excise Department appear not only to be in excellent order but to be used. No attempt will be made to discuss these valuable figures here: but the nature, quantity and value of the principal exports of agricultural products during the five years 1925-6 to 1929-30 in the accompanying table should be noted.

242 It is in experimenting in the culture of new or improved products required by the world, in adapting them to local environment, in multiplying them for local growth, and in demonstrating their successful cultivation and disposal on a commercial scale, that scientific agricultural research stations, progressive landed estates and well-managed marketing bodies, have such an indispensable part to play in the general development of the country's agriculture.

185 The establishment of an efficient national irrigation system and the application of the lessons of progressive scientific research and experience elsewhere must be recognised as two of the fundamental conditions of

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any solid economic advance in el 'Iraq. The third is the introduction and maintenance of a simple, secure and equitable land tenure, which term should be understood to include an even and readily met revenue demand. This report is only directly concerned with the last need: but in studying it, its inter-relation to the other two must be continuously kept in mind. No development of the country's agricultural resources can expect to be successful which does not take all these three needs into consideration together.

8. Comparison with Egypt

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8. During the progress of my inquiry comparisons were frequently instituted with Egypt, a country with many parallels to el 'Iraq both in its history and its natural conditions. Owing to the courtesy of the Egyptian Government I am able to compare in Table X the respective positions on certain salient points of el 'Iraq in 1929 and of Egypt in successive decades from 1882 onwards. It will be noted that during the last fifty years Egypt has more than doubled her population, added 50 per cent. to her cropped area, quadrupled her trade, and her budget, built up a substantial budgetary reserve, and largely absorbed her original external debt.

TABLE X. COMPARATIVE FIGURES, EL 'IRAQ AND EGYPT

		EL 'IRAQ	EGYPT					
		1929	1882	1890	1900	1910	1920	1929
Population in millions		2·8	6·8	8·2	10·1	11·8	13·2	14·4
Gross cultivable area, sq. km.		90,000	32,000					
Area cropped yearly, sq. km.		70,000	24,000*	27,000*	30,000*	32,000*	34,000*	36,000*
Imports		980	1,100	1,100	1,900	3,200	14,000	7,200
Exports		560	1,800	1,700	2,400	4,000	11,800	7,800
Re-exports		210†	14	40	80	60	350	190
Land Revenue		168	680‡	700‡	600‡	700‡	700‡	720‡
Customs Revenue		274	80	190	330	480	1,370	1,620
Total Budgetary Revenue		570	1,300	1,650	1,630	2,280	4,700	5,790
Total Budgetary Expenditure		560	1,230	1,560	1,800	2,340	4,000	5,690
Budgetary Reserve Fund				200	1,150	790	2,370	5,540
Debt§			10,900	13,100	13,000	13,100	12,900	12,400

*From ⅓ to ½ cropped twice. Net area cultivated in 1929 was 23,000 sq. km.

†Goods in transit, not included in imports.

‡Yield maintained constant on re-assessment following revenue settlement. Fluctuations due to remissions to unwatered land followed by extensions of irrigation.

§Mostly held in Egypt now.

Egypt is more favourably situated geographically than el 'Iraq; while Mahommed Ali Pasha did much to initiate early in the last century the reform of her land tenure which has proceeded since. And it will be seen that even fifty years ago Egypt was considerably more populous and wealthier than el 'Iraq is to-day. But el 'Iraq is by no means devoid of advantages also. She has Egypt's established success before her. Her cultivable area is larger and more diverse, so that she is in a better position to develop a varied export trade. She is free of unproductive debt and can devote all funds not absorbed by current needs, to productive purposes. And her petroliferous deposits provide her with special financial aid at the most useful moment. So that a comparable advance to that made by Egypt may be hoped for, if a comparable effort can be made.

The unavoidably lengthy duration of a general settlement of rights to land in el 'Iraq has been emphasised several times in this report: although no precise estimate of the period required is practicable in the

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000 absence of all data on which such an estimate could be dependably based.
E But the lessons of the Egyptian experience in the conduct of its parallel
651 revenue settlement should not be overlooked. The Egyptian revenue settlement was initiated by Decree dated February 9th, 1879. It was not completed until 1906. The statistics of the progress achieved during these twenty-seven years are instructive. In the first nine the work was an entire failure because it was attempted without a proper basis of land survey. During the following four years it was abandoned in despair. In the next seven years a quarter of the country was done with the aid of an indifferent sectional survey. In 1898 a unified and effective national Survey was at length recognised as indispensable. In the succeeding eight years the remaining three-quarters of the country was finished, and the quality of the work improved even more than the speed, as sound technical methods were introduced and enabled improvements in the general procedure of the settlement to be adopted. It will thus be seen that owing to the initial failure to appreciate the fundamental necessity of a scientifically sound and appropriate cadastral survey, the revenue settlement of Egypt occupied twenty-seven years whereas its final progress shows that it could have been completed in ten.* It will be remembered that the Turkish legislators had also recognised before the war the necessity of a foundation of reliable cadastral survey for land tenure throughout the Ottoman Empire (iii, 8).

E Now while the land surface to be dealt with in el 'Iraq is much
651 greater than in Egypt the individual parcels requiring investigation and
471 settlement will be many fewer although no doubt appreciably larger in extent on the average. Thus three and one third million individual
I holdings were recorded during the revenue settlement of Egypt, a
651 number which considerably exceeds the total population of el 'Iraq.
471 On a comparable basis the number of individual holdings in the latter might be expected to be about 800,000. As the population is still so largely nomadic half a million is probably nearer the true figure. (See also ii, 4 and Table V).

000 Although the fuller benefit of a settlement of rights was not practicable in Egypt at the time, owing to various reasons, the procedure was similar: but unfortunately no deductions can be drawn therefrom as to the speed of settlement of rights in el 'Iraq, because all the conditions in Egypt were so different.

4. The Main Problem of Tenure

I 4. As we have already seen, the land surface of el 'Iraq is more
423 literally than in most similar cases a vast national estate. The extent of
471 land held in private ownership (mulk) is small, and although it is intrinsically important, its legal position is clear and its regulation presents few difficulties. Probably four-fifths of the cultivable area of the country is in law fully and freely owned by the State and when cultivated held in practice under the general administrative control of its representatives. And even the legal ownership (raqaba) of the balance is vested in the State although, subject to important conditions, its usufructuary possession is held on a permanent heritable and assignable tenure. This tenure (known commonly as tapu) is that applicable under the provisions of the Land Code to all State land. The Ottoman Administration persistently sought to give effect to these provisions, but failed to do so because the successful operation of this tenure is impossible without an accompaniment of effective survey and land registration,

* See Paper 5. Egyptian Government Commission on Registration of Title to Land. 1917-21. Government Press. Cairo.

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which the Administration were unable to provide. And even if this radical defect had been remedied the application of this advanced tenure would have been premature throughout the majority of the country. So that to-day—more than half a century after the introduction of the Ottoman Land Code in the country—only a fraction of the cultivated region is somewhat uncertainly held on tapu tenure, while throughout the overwhelming balance, land is for the most part occupied and cultivated on no legal tenure at all.

The injurious effects of the prevailing welter of insecurity and confusion both on agricultural productivity and on public order have been emphasised in the body of this report and are too well known to need repetition. The main problem of land tenure may therefore be summarised as the need to establish security and clarity of tenure everywhere by a general definition and settlement on a clear legal basis of both statutory and equitable rights to land. The broad objective should be to confirm and maintain beneficial occupation and use, whenever this is reconcilable with the equitable treatment of third parties and the just interests of the public.

It is very understandably urged that the proper course is to extend tapu tenure generally throughout the cultivated territory, subject of course to the requisite clarification of that tenure and its adaptation to national requirements. Excellent as the chief characteristics of tapu tenure are, and advantageous as the suggested course may prove ultimately to be, this is too ambitious a plan to be practicable at present. It is what the Ottoman Government attempted and failed to do, and the causes for their failure must be remedied before that attempt can be successfully repeated. This was implicitly recognised by the Turks themselves some years before the war in a provisional law already cited. No useful purpose will be served by examining here the prospects of practical success of this now defunct measure. But it is certain that it is beyond the present capacity of el 'Iraq to establish the detailed cadastral survey and land register of the requisite accuracy and authority. And without these accompaniments any ostensible general introduction of tapu tenure would be to grasp an attractive shadow in preference to the substance of a solid and attainable reform. To place even the admitted rights to tapu tenure on an intelligible and proper basis will be a most difficult and lengthy undertaking.

Occasional and sporadic grants of miri land in tapu tenure can, of course, be made and implemented in due course if special justification arises and special efforts are taken. But no general grant of tapu tenure can be made effective for many years to come. And while islands of secure tenure and good culture are most valuable, it is the establishment of a general reform giving security of tenure to the mass of existing landholders and cultivating tenants, which is needed to stimulate enterprise and development throughout the length and breadth of the country and thereby promote economic revival on a national scale.

A hardly less important accompanying reform is the establishment of a uniform and equitable basis for land revenue collection. Here again the Turkish administrator perseveringly sought to establish in his land tax (werko) a measure admirable in principle and conception. But here again he was unable to translate his measure effectively and generally from the Statute book to the land. And here again no far-reaching or solid success is practicable in the absence of a reliable land survey, or without a general settlement of rights and a methodical valuation of the land, as was also ultimately recognised by the Ottoman Government.

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5. Summary of Recommendations

185 3. The dominant facts to be taken into consideration in planning these reforms are the magnitude of the task and the poverty of el 'Iraq's resources at present in experienced public servants, in money and in equipment. It is, therefore, of the utmost importance that the simplest measures that will secure the main essentials shall be adopted. Anything less will be waste of money and effort. Anything more, at this stage, will divert money, effort and equipment from complementary productive reforms.

The simplest form of tenure that can be adopted at present for miri land is the effective application of the leasehold, under which it is already in theory commonly supposed to be held. This will be immeasurably easier to operate than tapu tenure. And leaseholds which work successfully can give the great body of landholders a clarity and security of tenure in practice, which will not be realisable under tapu tenure until a proper cadastral survey of the country has been executed and an efficient system of registration of title to land is in general operation.

It would also seem wiser for the State to retain the residuary freedom it would still possess under the leasehold system to occupy and use miri land for national purposes, until the land surface of a district has been mapped and contoured, and the irrigation and communications systems projected therein have been planned in detail. For many years to come el 'Iraq will possess a superabundance of potentially valuable agricultural land, so that in planning new works it should always be possible to re-arrange holdings to the common advantage of the holders and the State. But if a general policy of granting land in tapu tenure is adopted in advance of the planning of the national estate, expropriation would have to be resorted to, to resume land so granted. And expropriation would be more troublesome, slower and more costly, all of which would ultimately re-act on the general taxpayers and on the progress of development as a whole.

000 The principal measures recommended in the main body of this report may now be summarised very briefly:

(i) The establishment of a small Central Lands Office attached to the Ministry of the Interior. This office would be responsible for the continued study of land tenure and allied questions and for the general direction of the executive programme of reform recommended (viii, 3 and 7).

(ii) The Survey Department, the State Domains service, and the Tapu Department to remain attached to their present Ministries (viii, 7).

(iii) The remedy of a number of important weaknesses in the organisation and equipment of the Survey Department and the unification of all land survey required by the State under this service (ii, 5 and viii, 4 and 5).

(iv) A combined programme of a skeleton form of cadastral survey, of settlement of rights to land, and of land valuation, on the simplest lines to be carried methodically through the country (v, 7, vi, 1-5 and 9).

(v) Land survey operations to be conducted under the unfettered technical direction of the Survey Department, but in accordance with the general programme adopted, after due consultation, by the Central Lands Office (viii, 3 and 4).

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(vi) The parallel operations of settlement of rights to land and of land valuation in the field to be undertaken by selected Administrative Officers working under the general administration of the Central Lands Office, and helped by suitable assistant officers (vi, 4 and 5, viii, 3).

(vii) The comprehensive study and progressive amendment of the Land Code and supplementary legislation, so as to make the statutory land law clear, consistent, and workable and better adapted to local needs and conditions (vii, 1).

(viii) The establishment of a special Land Court to hear due and proper appeals from the decisions of Settlement Officers in regard to rights to land (vi, 3).

(ix) The establishment of a suitable independent body to hear similar due and proper appeals in regard to the valuation of land (viii, 3).

(x) The general policy animating settlement of rights to land to be the confirmation and maintenance of beneficial occupation and use whenever reconcilable with the equitable treatment of third parties and the just interests of the public. Existing legal tenures to be duly recognised: but the possession of miri land to be granted out on leasehold, which it is suggested might normally be for ten-year periods.

The above are all measures for the initial execution of the reforms. Owing to the complexity and many-sidedness of the problem, it is better to defer detailed consideration of the measures of conservation that would be subsequently needed, until Government has decided whether to proceed with the programme of initial reforms or not. The nature of these subsequent measures of conservation, have been indicated in previous parts of this report (e.g., viii, 1).

The greatest pains have been taken throughout to suggest the simplest and cheapest measures which are capable, if steadily and effectively applied, of establishing the land tenure and land revenue of the country on a generally acceptable and economically sound foundation. It is earnestly hoped that the interdependence of these measures will be recognised and that the scheme put forward will be considered as a united whole. And I venture more particularly here to emphasise the desirability of entrusting the conduct of settlement and land valuation operations in the field to selected Administrative Inspectors, at least during the earlier years of the work. As has been represented earlier (vi, 4) the qualifications that these officers possess make them exceptionally fitted for the execution of this most onerous, greatly needed, but essentially transitory, task.

6 and 7. Concluding Considerations

6. But the central question for Government to decide is whether to undertake a comprehensive programme of practical reform or to leave things as they are. As has been noted more fully earlier in this report, the importance of putting the land tenure of the country on to a clear, equitable and stable basis was appreciated at the very outset of the establishment of modern el 'Iraq. It has received most earnest consideration ever since. And yet it has to be recognised that more than a decade has passed without any effective steps in the desired direction having been taken. The times have been troubled, the pre-occupations of Government great, while a decade is a brief space in the lifetime of a

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185 people. So there is nothing unusual in the failure so far to attack this evil effectively. Richer and more experienced countries have done no better. Indeed it is remarkable that the importance of the question was realised so quickly and appears to be understood so generally throughout the country.

But attention has to be directed to the past as a guide to the future. For this reason it should be realised that ten years, during which a great deal of thought and labour have been devoted to the subject, have elapsed without any constructive measure for the general improvement of the tenure of land by the mass of landowners and cultivators having been carried out. And although ten years is a short span in a country's history it is a considerable portion of a man's life. Resolute and well-directed effort during the next ten years could put the tenure of land throughout the bulk of the country on to an essentially sound and satisfactory footing; whereas the next ten, twenty, or a hundred years will find the prevailing evils still uncured if they are not attacked on more practical lines than hitherto. And it should perhaps again be stressed that few countries exhibit such deplorably unstable and confused conditions of land tenure, or are so dependent for the creation of the wealth they need, upon stimulating the energy of the whole agricultural population and safeguarding their attachment to the land. For while no proper development of the country's resources is possible without a well planned and well regulated system of irrigation or without assimilating and applying the lessons of scientific and economic advance elsewhere, yet the fruitfulness of these measures will ultimately depend upon the individual efforts of the great mass of landholders and cultivators throughout the country.

7. And the past history of the land should also help the public to realise that the present long established and deep-seated evils cannot be cured by edict or in a year or two. The establishment in practice throughout the country of a secure legal land tenure will not be brought about by a vote in the Legislative Chamber nor by any official actions alone. A considerable amount of preparatory work must precede any useful legislation: and such preparatory work must be well conceived and thorough if it is to yield satisfactory, economical and assured results. For even the most appropriate legislation is only the national authority to proceed. Before such legislation can be implemented attention must be directed to providing the necessary working organisation, to securing suitable officers, and to formulating investigatory and technical procedure which will both satisfy the practical requirements of the work and ensure the co-operation of the agricultural population. For success must be gauged by its ultimate effects, and it will be decisively determined in the open fields by the confidence felt by the general body of landholders and cultivators in the integrity and competence of the settlement staff, by the reasonableness and dispatch of the procedure adopted, and by the equity and stability of the findings.